

**COMMENTARY ON
THE
PREVENTION OF FOOD
ADULTERATION ACT, 1954**

(Act XXXVII of 1954)

(With upto date case law, rules & notifications.)

BY

**MOTI RAM, B.A., LL.B., Advocate,
GURDASPUR.**

&

**SUKHDEV, B.A., LL.B., Pleader,
GURDASPUR.**

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2. " prevention
3. " inspectors
4. " poisoning
5. " imports
6. " analysis
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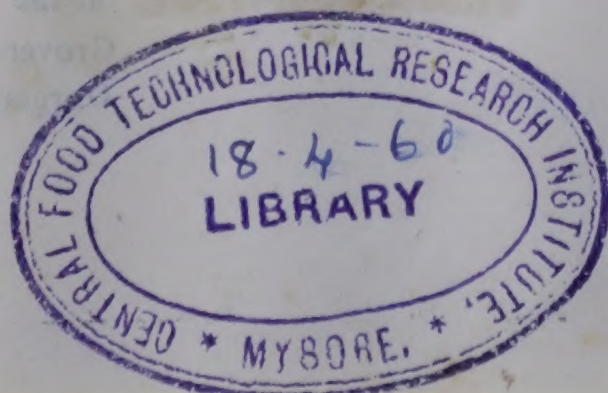
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P R E F A C E

prior to the enforcement of the present Prevention of Food Adulteration Act, 1954 (XXXVII of 1954) there existed various Provincial Acts in different States in India relating to food adulteration. The Govt. was not satisfied with the working of these Provincial Acts in checking the adulteration of food. The necessity was felt to safe guard the interests of the public and to ensure the public protection from the injurious effects of the use of adulterated food. So a uniform and more stringent legislation for the whole of India was considered essential and with that laudable object the present Central Act has been passed. This Act applies to the whole of India except the state of Jammu and Kashmir. The Act having been passed recently, there is not very much case law under the present Central Act. The previous Provincial Acts had mostly similar provisions on which there is ample case law of the various High Courts which has been fully availed of by the authors of the present commentary. Some important English cases have also been availed of. Relevant provisions of some of the Provincial Acts have been given in Appendix D for facility of reference. The commentary is most upto date both in the matter of citation of case law as well as in giving the rules and notifications.

The authors feel sure that both the bench and the bar as well as the various departments concerned will find the present work highly useful.

Any suggestions from the learned readers will be highly appreciated and thankfully acknowledged.

Dated 23rd Feb. 1959.

SUKHDEV

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ADDENDA

Latest Notifications issued by the Central Government under Section 23 while the book was in the Press.

G.S.R. 1211,—In exercise of the powers conferred by section 23 of the Prevention of Food Adulteration Act, 1954 (37 of 1954), the Central Government, after consultation with the Central Committee for Food Standards, hereby makes the following further amendments in the Prevention of Food Adulteration Rules, 1955 the same having been previously published as required by sub-section (1) of the said section, namely :—

In the said rules—

1. For rule 18, the following rule shall be substituted :—
“18. Memorandum and impression of seal to be sent separately.—A copy of the memorandum and a specimen impression of the seal used to seal the packet shall be sent to the Public Analyst separately by registered post or delivered to him or to any person authorised by him”.

2. In the table under rule 22—

(i) for the figures and symbol “12 oz.” against item No. 15 relating to “Aerated water”, the figures and symbol “20 oz.” shall be substituted.

(ii) after item 16 relating to “Vanaspati” the following items shall be inserted, namely :—

17. Spices	...	...	...	4 oz.
18. Fruit and vegetable products, Jams, Jellies and the like	...	...	...	8 oz.
19. Pulses, cereals and the like	...	...	...	8 oz.
20. Asafoetida	...	...	...	2 oz.
21. Saffron	...	...	...	$\frac{1}{2}$ oz.
22. Ice-cream and mixed ice-cream	...	...	...	8 oz.
23. Foods (not specified)	...	...	—	8 oz.

3. In rule 29—

after item (k), the following items shall be added, namely :—

“(1) Processed or preserved vegetables.

(m) Flavouring agents.”

4. In rule 32—

for clause (c), the following clause shall be substituted, namely :—

- “(c) where any permitted class II preservative and or permitted colouring agent and or permitted antioxidant and or vitamin is added a statement to the effect that it contains permitted class II preservatives and or permitted colouring agents and or permitted antioxidants and/or vitamins.”
5. In sub-rule (2) of rule 40, for the word “beverage” the words “fruit syrup” shall be substituted.
- 6 In rule 42(B)(i)—
In the forms of declarations (c), (d) and (g) for the words “UNFIT FOR BABIES” the words “UNSUITABLE FOR BABIES” shall be substituted.
- 7 In rule 43—
- (i) to sub-rule (1), the following proviso shall be added, namely :—
“Provided that for the purpose of this rule the following shall not be deemed as an admixture or an addition namely :—
(a) Salt in butter or margarine and
(b) Vitamins in foods
- (ii) in the form of declaration under sub-rule (1), the words “international units of” and “per ounce” shall be omitted.
- (iii) in sub-rule (5), for the words “aerated water and vegetables”, the following shall be substituted, namely :—
“aerated water, vegetables and flavouring agents”.
8. To clause (i) of rule 44, the following proviso shall be added, namely :—
“Provided that the Central Government may by notification in the Official Gazette, exempt any preparations made of soluble extracts of coffee from the operation of this rule”.
9. For the proviso to sub-rule (5) of rule 49 the following proviso shall be substituted, namely :—
“Provided that utensils or containers made of copper though not properly tinned may be used for the preparation of sugar, confectionery or essential oils and mere use of such utensils or containers shall not be deemed to render sugar, confectionery or essential oils unfit for human consumption”.
10. In Rule 50—
(i) in clause (a) of sub-rule (1), after the words “separa-

ted milk" the words "or toned milk or reconstituted milk" shall be inserted.

(ii) sub-rule (8) shall be omitted.

11. After Part X, the following shall be added, namely :—

"PART XI—POISONOUS METALS

57. *Poisonous Metals*.—(1) Chemicals described in monographs of the Indian Pharmacopoeia when used in foods, shall not contain poisonous metals beyond the limits specified in the appropriate monographs of the Indian Pharmacopoeia for the time being in force.

(2) Notwithstanding the provisions of sub-rule (1), no article of food specified in column 2 of the table below shall contain any metal specified in excess of the quantity specified in column 3 of the said table.

TABLE

<i>Name of the poisonous metal</i>	<i>Article of food</i>	<i>Parts per million by weight</i>
(1)	(2)	(3)
1 Lead	(i) Beverages :	
	Concentrated soft drinks (but not including concentrates used in the manufacture of soft drinks)	0·5
	Fruit and vegetable juice (including tomato juice, but not including lime juice and lemon juice)	1·0
	Concentrates used in the manufacture of soft drinks lime juice and lemon juice.	2·0
	(ii) Other foods :	
	Anhydrous dextrose and dextrose monohydrate, Edible oils and fats, refined white sugar (sulphated ash content not exceeding 0·03 per cent)	0 5
	Ice-cream, liced lollies and	

(X)

ADDENA

Name of the
poisonous metal

Article of food

Parts per million
by weight

(1)

(2)

(3)

similar frozen confections	1.0
Canned fish, ...	}
Canned meats ...	
Edible gelatin ...	
Meat extracts and hydro- lysed protein	
Dried or dehydrated vegetables (other than onions) ...	
All types of sugar syrup invert sugar and direct consumption coloured sugar with sulphated ash content exceeding 1.0 per cent ...	
Raw sugars except those sold for direct consump- tion or used for manufac- turing purposes other than the manufacture of refined sugar, Edible molasses Caramel	
Liquid and solid glucose and starch conversion products with a sulphated ash content exceeding 1.0 per cent	
Cocoa powder ...	
Yeast and yeast product ...	
Tea ...	}
Dehydrated onions,	
Dried herbs and spices,	
Flavourings, ...	
Alginic acid, alginates, agar, carrageen and similar pro- duct derived from seaweed	

<i>Name of the poisonous metal</i>	<i>Article of food</i>	<i>Parts per million by weight</i>
(1)	(2)	(3)
	Liquid pectin	10
	Chemicals not otherwise used as ingredients or in the preparation or pro- cessing of foods	
	Food colouring other than caramel	20 on the dry colouring matter.
	Solid pectin	50
	(iii) Foods not specified	2.5
2. Copper	(i) Beverages :-	
	Soft drinks excluding con- centrates	7
	Concentrates for soft drinks	20
	(ii) Other foods	30
	Chicory-dried or roasted	
	Coffee beans,	
	Flavourings,	
	Pectin-liquid	
	Colouring	30 on the dry colouring matter.
	Edible gelatin	30
	Tomato ketchup	50 on the dried total solids.
	Yeast and yeast products	60 on the dry mat- ter.
	Cocoa powder	70 on the fat-free substance.
	Tomato puree, paste powder juice and cocktails	100 on the dried tomato solids.
	Tea	150
	Pectin solid	300
	(iii) Foods not specified	30

(xii)

ADDENDA

Name of the poisonous metal	Article of food	Parts per million by weight	Arsenious Oxide (AS ₂ O ₃)
(1)	(2)	(3)	
		Arsenic (AS)	
3. Arsenic	(i) Milk	0.1	Nil
	(ii) Beverages :		
	Soft drinks intended for consump- tion after dilution	0.5	0.66
	(iii) Other foods ;		
	Ice cream, iced lollies and similar frozen confections	0.5	0.66
	Dehydrated onions, Edible gelatin, Liquid pectin	2.0	2.6
	Chicory-dried or roasted	4.0	5.3
	Dried herbs, Finings and clearing agents, Solid Pectin-all grades, Spices,	5.0	6.6
	Food colouring other than Syn- thetic colouring	5.0	6.6
		on dry colouring matter	on dry colouring matter
	(iv) Foods not specified		1.5
			Parts per million by weight
4. Tin	(i) Processed and canned products	250	
	(ii) Foods not specified	250	
5. Zinc	(i) Ready to drink beverages	5	
	(ii) Edible gelatin	100	
	(iii) Foods not specified	50	

PART XII—ANTIOXIDANTS AND EMULSIFYING AND STABILISING AGENTS

58. *Definition of anti-oxidant*—‘Antioxidant’ means a substance which when added to food retards or prevents

oxidative deterioration of food and does not include sugar, cereal oils, flours, herbs and spices.

59. *Restriction on use of anti-oxidants.*—No anti-oxidant, other than lecithin, ascorbic acid and tocopherol shall be added to any food :

Provided that the following antioxidants may be added to edible oils and fats, namely :

1. Ethyl gallate 2. Propyl gallate 3. Octyl gallate 4. Dodecyl gallate 5. Butylated hydroxytoluene (BHT) 6. Butylated hydroxyanisole (BHA) 7. Nordihydroguaiaretic acid (NDGA) 8 Citric acid 9. Tartaric acid 10. Gallic acid and 11. Resin guaiac.

60. *Definition of emulsifying and establishing agents.*—‘Emulsifying agents’ and ‘stabilising agents’ mean substances which when added to food are capable of facilitating a uniform dispersion of oils and fats in aqueous media, or *vice versa*, and of stabilising such emulsions and do not include the following, namely :—

Agar, alginic acid, calcium and sodium alginates, carrageen edible gums, dextrin, sorbitol, pectin, sodium and calcium pectate, sodium citrate, sodium phosphates, sodium tartrate, calcium lactate, lecithin, albumen, gelatin, quillaia, modified starches and, hydrolysed protein.

61. *Restriction on use of emulsifying and stabilising agents*—: No emulsifying or stabilising agents shall be used in food :

Provided that except in milk and cream the following emulsifying or stabilising agents may be used in foods, namely :—

Monoglycerides or diglycerides of fatty acids,
Synthetic lecithin,
Propyleneglycol stearate,
Propyleneglycol alginate,
Methyl ethyl cellulose,
Methyl cellulose,

Sodium Carboxymethyl cellulose,
Stearyl tartaric acid esters of monoglycerides and diglycerides of fatty acids,

Monostearin sodium sulphoacetate ;
Sorbitan esters of fatty acids or in combination, and
Brominated vegetable oils,

62. *Container of food to which any emulsifying and stabilising agent is added, to bear certain statements :—* Container of an article of food to which any emulsifying and stabilising agents have been added shall bear a statement of the chemical nature of such emulsifying and stabilising agents in addition to any trade name.

PART XIII—FLAVOURING AGENTS

63. *Use of Coumarin and Dihydro Coumarin prohibited :—* The use of coumarin and Dihydro coumarin in any article of food is prohibited.

12. In Appendix 'A'—

- (i) in Forms IV and V the following shall be inserted in the beginning of each Form, namely :—

"To

(Name and address of the vendor)

.....

.....

.....

13. In Appendix 'B'—

- (i) after the item A.04 the following item shall be inserted, namely :—

"A 05. Spices : The standard, specified for the various spices given in this clause shall apply to in whatever form whether whole or partly ground or in powder form".

- (ii) in item A.05.01 sub-para (a) shall be omitted.

(iii) in item A.11.06—

- (a) in each of the paras (a) and (b) after the words "not found in milk" the following shall be inserted, namely :—

"except sucrose and/or gur".

- (b) in para (b), after the words "from which it is derived" the following shall be inserted, namely :—

"Where dahi or curd, other than skimmed milk dahi is sold or offered for sale without any indication as to whether it is derived from cow or buffalo milk, the standards prescribed for dahi prepared from buffalo milk shall apply".

(iv) in item A.14. —

the following para, shall be added, namely:—

“It shall not contain any added colouring matter.”

(v) in item A.17.01—

for the word and figures, “250 to 260” against (b) the words and figures—

“Not less than 250” shall be substituted.

(vi) in item A.17.06 —

after clause (e), the following clause shall be added, namely:—

“(f) Bellier (Turbidity test) by Ever’s method (Acetic acid)—Not more than 26.5°C.

(vii) in item A.19—

(a) the words “Vegetable Oil product or” occurring in the first line shall be omitted.

(b) in sub-clause (x) for the words “Vegetable Oil Product” the word “Vanaspati” shall be substituted.

(c) the following proviso shall be added to clause (iii) namely:—

“Provided that diacetyl to the extent of not more than 4.0 p.p.m. may be added to Vanaspati exclusively meant for consumption by the Armed Forces”

(d) in clause (v) for the figure and symbol “33°C” the figure and symbol “31°C” shall be substituted.

(viii) for items A.03.02. A 11.13. the following shall be respectively substituted:—

“A.03.02. Sago shall mean small hard globules or pearls made from either the starch of the tubers of tapioca (*manihot utifissima*) and shall be free from any extraneous matter”.

“A.11.4. Toned milk means the product prepared by blending milk with fresh separated milk or with separated milk reconstituted from spray dried skim milk powder or by partial abstraction of the fat through skimming or separation of milk.

It shall contain not less than 3.0 per cent of milk fat and 8.5 per cent of milk solids other than milk fat”.

“A.11.13. Khoa means the product derived from milk of cow or buffalo by partial dessication of water therefrom

by the process of heating and it shall not contain any ingredient not found in milk. The fat content shall not be less than 20 per cent.

(ix) The following items shall be added, namely:--

A.06.16 Black Cumin or Kala-zeera shall be dried seeds of *Nigella Sativa* Linn, and shall contain. --

(a) Not more than 5 per cent of foreign organic matter.

(b) Not more than 7.0 per cent of total ash.

(c) Not more than 1.25 per cent of ash insoluble in hydrochloric acid.

(d) Not less than 0.5 per cent of volatile oil.

A.11.09.01 Skimmed milk Channa means the product obtained by precipitating the curd from boiling skimmed milk of cow or buffalo or a mixture or both by the addition of lactic or citric acids or any other suitable coagulating agent.

A.11.10.03 Recombined or reconstituted milk means the product prepared by mixing homogenised milk fat and separated milk reconstituted from spray-dried and skimmed milk powder.

It shall contain not less than 3.0 per cent of milk fat and 8.5 per cent of milk solids other than milk fat.

A. 18.04 Besan means the product obtained by grinding dehusked Bengal gram (*Cicer arietinum*) and shall not contain any added colouring matter or any other foreign ingredient.

A.10.05. Pearl Barley is the product obtained by polishing and attrition of whole barley grains, after removal of the husk. It shall be free from tale foreign starches and other extraneous matter.

BARE ACT,
The Prevention of Food Adulteration Act,
(No. 37 of 1954)

An Act to make provision for the prevention of adulteration of food.

[29th September, 1954.]

BE it enacted by Parliament in the Fifth Year of the Republic of India as follows :

PRELIMINARY

1. *Short title, extent and commencement.* (1) This Act may be called the Prevention of Food Adulteration Act, 1954.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may by notification in the official Gazette, appoint.

2. *Definitions.* In this Act, unless the context otherwise requires,—

(i) “Adulterated”—an article of food shall be deemed to be adulterated—

(a) if the article sold by a vendor is not of the nature, substance or quality demanded by the purchaser and is to his prejudice, or is not of the nature, substance or quality which it purports or is represented to be ;

(b) if the article contains any other substance which affects or if the article is so processed as to affect injuriously the nature, substance or quality thereof ;

(c) if any inferior or cheaper substance has been substituted wholly or in part for the article so as to affect injuriously the nature, substance or quality thereof ;

(d) if any constituent of the article has been, wholly or in part, abstracted so as to affect injuriously the nature, substance or quality thereof ;

- (c) if the article had been prepared, packed or kept under insanitary conditions whereby it has become contaminated or injurious to health ;
 - (f) if the article consists wholly or in part of any filthy, putrid, disgusting, rotten, decomposed or diseased animal or vegetable substance or is insect-infested or is otherwise unfit for human consumption ;
 - (g) if the article is obtained from a diseased animal ;
 - (h) if the article contains any poisonous or other ingredient which renders it injurious to health ;
 - (i) if the container of the article is composed, whether wholly or in part, of any poisonous or deleterious substance which renders its contents injurious to health ;
 - (j) if any colouring matter other than that prescribed in respect thereof and in amounts not within the prescribed limits of variability is present in the article ;
 - (k) if the article contains any prohibited preservative or permitted preservative in excess of the prescribed limits ;
 - (l) if the quality or purity of the article falls below the prescribed standard or its constituents are present in quantities which are in excess of the prescribed limits of variability ;
- (ii) "Central Food Laboratory" means any laboratory or institute established or specified under Sec. 4 ;
 - (iii) "Committee" means the Central Committee for Food Standards constituted under Sec. 3 ;
 - (iv) "Director of the Central Food Laboratory" means the person appointed by the Central Government by notification in the Official Gazette as the Director of the Central Food Laboratory and includes any person appointed by the Central Government in like manner to perform all or any of the functions of the Director under this Act ;
 - (v) "Food" means any article used as food or drink for human consumption other than drugs and water and includes—
 - (a) any article which ordinarily enters into, or is

used in the composition or preparation of human food, and

- (b) any flavouring matter or condiments ;
- (vi) "Food (Health) Authority" means the Director of Medical and Health Services or the Chief Officer incharge of Health administration in a State by whatever name he is called ;
- (vii) "Local area" means any area, whether urban or rural, declared by the State Government, by notification in the official Gazette to be local area for the purposes of this Act ;
- (viii) "Local authority" means in the case of—
 - (1) a local area which is—
 - (a) a municipality, the municipal board or municipal corporation ;
 - (b) a cantonment, the cantonment authority ;
 - (c) a notified area, the notified area committee ;
 - (2) any other local area, such authority as may be prescribed by the State Government under this Act ;
- (ix) "Misbranded"—an article of food shall be deemed to be misbranded—
 - (a) if it is an imitation of, or is a substitute for, or resembles in a manner likely to deceive, another article of food under the name of which it is sold, and is not plainly and conspicuously labelled so as to indicate its true character ;
 - (b) if it is falsely stated to be the product of any place or country ;
 - (c) if it is sold by a name which belongs to another article of food ;
 - (d) if it is so coloured, flavoured or coated, powdered or polished that the fact that the article is damaged is concealed or if the article is made to appear better or of greater value than it really is ;
 - (e) if false claims are made for it upon the label or otherwise ;
 - (f) if, when sold in packages which have been sealed or prepared by or at the instance of the manufacturer or producer and which bear his name and address

contents of each package are not conspicuously and correctly stated on the outside thereof within the limits of variability prescribed under this Act ;

- (g) if the package containing it or the label on the package bears any statement, design or device regarding ingredients or the substances contained therein, which is false or misleading in any material particular ; or if the package is otherwise deceptive with respect to its contents ;
- (h) if the package containing it or the label on the package bears the name of a fictitious individual or company as the manufacturer or producer of the article ;
- (i) if it purports to be, or is represented as being, for special dietary uses, unless its label bears such information as may be prescribed concerning its vitamin, mineral, or other dietary properties in order sufficiently to inform its purchaser as to its value for such uses ;
- (j) if it contains any artificial flavouring, artificial colouring or chemical preservative, without a declaratory label stating that fact, or in contravention of the requirements of this Act or rules made thereunder ;
- (k) if it is not labelled in accordance with the requirements of this Act or rules made thereunder ;
- (x) "Package" means a box, bottle, casket, tin, barrel, case, receptacle, sack, bag, wrapper or other thing in which an article of food is placed or packed ;
- (xi) "Premises" include any shop, stall or place where any article of food is sold or manufactured or stored for sale ;
- (xii) "Prescribed" means prescribed by rules made under this Act ;
- (xiii) "Sale" with the grammatical variations and cognate expressions, means the sale of any article of food, whether for cash or on credit or by way of exchange and whether by wholesale or retail, for human consumption or use, or for analysis, and includes an agreement for sale, an offer for, sale the exposing for sale or having in possession for sale of any such article, and includes also an attempt to sell any such article ;

- (xiv) "Sample" means a sample of any article of food taken under the provisions of this Act or of any rules made thereunder ;
- (xv) the words "unwholesome" and "noxious" when used in relation to an article of food mean respectively that the article is harmful to health or repugnant to human use.

CENTRAL COMMITTEE FOR FOOD STANDARDS AND CENTRAL FOOD LABORATORY

3. *The Central Committee for food standards.* (1) The Central Government shall, as soon as may be after the commencement of this Act, constitute a committee called the Central Committee for Food Standards to advise the Central Government and the State Governments on matters arising out of the administration of this Act and to carry out the other functions assigned to it under this Act.

(2) The Committee shall consist of the following members, namely,—

- (a) the Director-General, Health Services, *ex-officio*, who shall be the Chairman ;
- (b) the Director of the Central Food Laboratory, *ex-officio* ;
- (c) two experts nominated by the Central Government ;
- (d) one representative each of the Central Ministries of Food and Agriculture, Commerce and Industry, Railways and Defence nominated by the Central Government ;
- (e) one representative each nominated by the Government of each [* * *]¹ State ;
- (f) two representatives nominated by the Central Government to represent the [Union Territories]² ;
- (g) two representatives of Industry and Commerce nominated by the Central Government ;
- (h) one representative of the medical profession nominated by the Indian Council of Medical Research ;

(3) The members of the Committee referred to in clauses (c),

1. Words and letters "Part A State and Part B" omitted by Taxation, of Laws (No. 1) Order, 1956.

2. Substituted "Part C States" by (ibid.).

6 PREVENTION OF FOOD ADULTERATION ACT, 1954.

(d),(e), (f),(g) and (h) of sub-sec. (2) shall, unless their seats become vacant earlier by resignation, death or otherwise, be entitled to hold office for three years and shall be eligible for renomination.

(4) The functions of the Committee may be exercised notwithstanding any vacancy therein.

(5) The Committee may appoint such and so many sub-committees as it deems fit and may appoint to them persons who are not members of the Committee to exercise such powers and perform such duties as may, subject to such conditions, if any, as the Committee may impose, be delegated to them by the Committee.

(6) The Committee may, subject to the previous approval of the Central Government, make by-laws for the purpose of regulating its own procedure and the transaction of its business.

4. *Central Food Laboratory.* (1) The Central Government may, by notification in the official Gazette,—

(a) establish a Central Food Laboratory ; or

(b) specify any laboratory or institute as a Central Food Laboratory ; to carry out the functions entrusted to the Central Food Laboratory by this Act or any rules made under this Act.

(2) The Central Government may, after consultation with the Committee, make rules prescribing ;

(a) the functions of the Central Food Laboratory ;

(b) the procedure for the submission to the said Laboratory of samples of articles of food for analysis or tests, the forms of the Laboratory's reports thereon and the fees payable in respect of such reports ;

(c) such other matters as may be necessary or expedient to enable the said Laboratory to carry out its functions.

5. *General provisions as to Food. Prohibition of import of certain articles of food.* No person shall import into India—

(i) any adulterated food ;

(ii) any misbranded food ;

(iii) any article of food for the import of which a licence is prescribed, except in accordance with the conditions of the licence ; and

(iv) any article of food in contravention of any other provision of this Act or of any rule made thereunder.

6. *Application of law relating to Sea Customs and powers of Customs Officers* (1) The law for the time being in force relating to Sea Customs and to goods, the import of which is prohibited by Sec. 18 of the Sea Customs Act, 1878 (VIII of 1878) shall, subject to the provisions of Sec. 16 of this Act, apply in respect of articles of food, the import of which is prohibited under Sec. 5 of this Act, and officers of Customs and officers empowered under that Act to perform the duties imposed thereby on a Customs Collector and other officers of Customs shall have the same powers in respect of such articles of food as they have for the time being in respect of such goods as aforesaid.

(2) Without prejudice to the provisions of sub-sec. (1) the Customs Collector, or any officer of the Government authorized by the Central Government in this behalf, may detain any imported package which he suspects to contain any article of food the import of which is prohibited under Sec. 5 of this Act and shall forthwith report such detention to the Director of the Central Food Laboratory and, if required by him, forward the package or send samples of any suspected article of food found therein to the said laboratory.

✓ 7. *Prohibition of manufacture, sale, etc. of certain articles of food.* No person shall himself or by any person on his behalf manufacture for sale, or store, sell or distribute —

- (i) any adulterated food ;
- (ii) any misbranded food ;
- (iii) any article of food for the sale of which a licence is prescribed, except in accordance with the conditions of the licence ;
- (iv) any article of food the sale of which is for the time being prohibited by the Food (Health) Authority with a view to preventing the outbreak or spread of infectious diseases ; or
- (v) any article of food in contravention of any other provision of this Act or of any rule made thereunder.

Analysis of Food

✓ 8. *Public Analysts.* The State Government may, by notification in the official Gazette, appoint persons in such number as it thinks fit and possessing such qualifications as may be prescribed, to be Public Analysts and define the local areas over which they shall exercise jurisdiction :

Provided that no person who has any financial interest

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in the manufacture, import or sale of any article of food shall be so appointed :

Provided further that the State Government may appoint one Public Analyst for two or more local areas, such local areas being regarded as one unit for the purposes of this Act.

9. *Food Inspectors* (1) Subject to the provisions of Sec. 14 the State Government may, by notification in the official Gazette, appoint persons in such number as it thinks fit, having the prescribed qualifications to be Food Inspectors for the purposes of this Act, and they shall exercise their powers within such local areas as that Government may assign to them :

Provided that no person who has any financial interest in the manufacture, import or sale of any article of food shall be so appointed.

(2) Every Food Inspector shall be deemed to be a public servant within the meaning of the Indian Penal Code (Act XLV of 1860).

10. *Powers of Food Inspectors.* (1) A Food Inspector shall have power—

- (a) to take sample of any article of food from —
 - (i) any person selling such article ;
 - (ii) any person who is in the course of conveying, delivering or preparing to deliver such article to a purchaser or consignee ;
 - (iii) a consignee after delivery of any such article to him ; and
- (b) to send such sample for analysis to the Public Analyst for the local area within which such sample has been taken ;
- (c) with the previous approval of the Health Officer having jurisdiction in the local area concerned, or with the previous approval of the Food (Health) Authority, to prohibit the sale of any article of food with a view to preventing the outbreak or spread of any infectious disease.

(2) Any Food Inspector may enter and inspect any place where any article of food is manufactured, stored or exposed for sale and take sample of such articles of food for analysis.

(3) Where any sample is taken under clause (a) of subsection (1) or sub-section (2), its cost calculated at the rate at which the

article is usually sold to the public shall be paid to the person from whom it is taken.

(4) If any article intended for food appears to any Food Inspector to be adulterated or misbranded, he may seize and carry away or keep in the safe custody of the vendor such article in order that it may be dealt with as hereinafter provided.

(5) The power conferred by this section includes power to break open any package in which any article of food may be contained or to break open the door of any premises where any article of food may be kept for sale:

Provided that the power to break open the door shall be exercised only after the owner or any other person in occupation of the premises, if he is present therein, refuses to open the door on being called upon to do so :

Provided further that the Food Inspector shall, in exercising the powers of entry upon, and inspection of any place under this section, follow, as far as may be, the provisions of the Code of Criminal Procedure (Act V of 1898), relating to the search or inspection of a place by a police officer executing a search warrant issued under the Code.

(6) Any material found in the possession of a manufacturer of any article of food or in any of the premises occupied by him as such and being apparently of a kind which may be employed for purposes of adulteration and for the possession of which he is unable to account to the satisfaction of the Food Inspector, may be seized by the Food Inspector and if necessary a sample of such material submitted for analysis to a Public Analyst.

(7) Where the Food Inspector takes any action under clause (a) of sub-section (1), sub-section (2), sub-section (4) or sub-section (6), he shall, as far as possible, call not less than two persons to be present at the time when such action is taken and take their signatures.

(8) Any Food Inspector may exercise the powers of a public officer under Sec. 57. of the Code of Criminal Procedure, 1898 (Act V of 1898), for the purpose of ascertaining the true name and residence of the person from whom a sample is taken or an article of food is seized.

(9) Any Food Inspector exercising powers under this Act or under the rules made thereunder who—

(a) vexatiously and without any reasonable grounds of suspicion seizes any article of food ; or

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- (b) commits any other act to the injury of any person without having reason to believe that such act is necessary for the execution of his duty shall be guilty of an offence under this Act and shall be punishable for such offence with fine which may extend to five hundred rupees.

11. *Procedure to be followed by Food Inspectors.* (1) When a Food Inspector takes a sample of food for analysis, he shall—

- (a) give notice in writing then and there of his intention to have it so analysed to the person from whom he has taken the sample ;
- (b) except in special cases provided by rules under this Act, separate the samples then and there into three parts and mark and seal or fasten up each part in such a manner as its nature permit ; and
- (c) (i) deliver one of the parts to the person from whom the sample has been taken ;
(ii) send another part for analysis to the Public Analyst; and
(iii) retain the third part for production in case any legal proceedings are taken or for analysis by the Director of the Central Food Laboratory under sub-section (2) of section 13, as the case may be.

(2) If the person from whom the sample has been taken declines to accept one of the parts, the Food Inspector shall send intimation to the Public Analyst of such refusal and thereupon the Public Analyst receiving a sample for analysis shall divide it into two parts and shall seal or fasten up one of those parts and shall cause it, either upon receipt of the sample or when he delivers his report, to be delivered to the Food Inspector who shall retain it for production in case legal proceedings are taken.

(3) When a sample of any article of food is taken under sub-section (1) or sub-section (2) of Sec. 10, the Food Inspector shall send a sample of it in accordance with the rules prescribed for sampling to the Public Analyst for the local area concerned,

(4) An article of food, seized under sub-section (4) of Sec. 10, shall be produced before a Magistrate as soon as possible ;

Provided that in the case of any article of which samples have been sent to the Public Analyst for analysis it may be produced on or after the receipt of the report of the Public Analyst :

Provided further that if an application is made to the Magistrate in this behalf by the person from whom any article of food

has been seized, the Magistrate shall by order in writing direct the Food Inspector to produce such article before him within such time as may be specified in the order.

(5) If it appears to the Magistrate on taking such evidence as he may deem necessary that the article of food produced before him under sub-section (4) is adulterated, he may order it—

- (a) to be forfeited to the local authority, or
- (b) to be destroyed at the cost of the owner or the person from whom it was seized so as to prevent its being used as human food, or
- (c) to be so disposed of as to prevent its being again exposed for sale or used for food under its deceptive name, or
- (d) to be returned back to the owner for being sold under its appropriate name, after taking adequate guarantee from the owner.

(6) If it appears to the Magistrate that any such article of food is not adulterated the person from whose possession the article was taken shall be entitled to have it restored to him and it shall be in the discretion of the Magistrate to award such person from such fund as the State Government may direct in this behalf, such compensation not exceeding the actual loss which he has sustained as the Magistrate may think proper.

12. *Purchaser may have food analysed.* Nothing contained in this Act shall be held to prevent a purchaser of any article of food other than a Food Inspector from having such article analysed by the Public Analyst on payment of such fees as may be prescribed and from receiving from the Public Analyst a report of his analysis.

Provided that such purchaser shall inform the vendor at the time of purchase of his intention to have such article so analysed :

Provided further that the provisions of sub-section (1) sub-section (2) and sub-section (3) of section 11 shall, as far as may be, apply to a purchaser of article of food who intends to have such article so analysed, as they apply to a Food Inspector who takes a sample of food for analysis :

Provided also that if the report of the Public Analyst shows that the article of food is adulterated, the purchaser shall be entitled to get refund of the fees paid by him under this section.

13. *Report of Public Analyst.* (1) The Public Analyst shall

deliver in such form as may be prescribed, a report to the Food Inspector of the result of the analysis of any article of food submitted to him for analysis.

(2) After the institution of a prosecution under this Act the accused vendor or the complainant may, on payment of the prescribed fee, make an application to the Court for sending the part of the sample mentioned in sub-clause (i) or sub-clause (iii) of clause (c) of sub-section (1) of section 11 to the Director of the Central Food Laboratory for a certificate ; and on receipt of the application the Court shall first ascertain that the mark and seal or fastening as provided in clause (b) of sub-section (1) of section 11 are intact and may then despatch the part of the sample under its own seal to the Director of the Central Food Laboratory who shall thereupon send a certificate to the Court in the prescribed form within one month from the date of receipt of the sample, specifying the result of his analysis.

(3) The certificate issued by the Director of the Central Food Laboratory under sub-section (2) shall supersede the report given by the Public Analyst under sub-section (1).

(4) Where a certificate obtained from the Director of the Central Food Laboratory under sub-section (2) is produced in any proceeding under this Act, or under Secs. 272 and 276 of the Indian Penal Code (Act XLV of 1860) it shall not be necessary in proceeding to produce any part of the sample of food taken for analysis.

(5) Any document purporting to be a report signed by a Public Analyst, unless it has been superseded under sub-section (3) or any document purporting to be a certificate signed by the Director of the Central Food Laboratory, may be used as evidence of the facts stated therein in any proceeding under this Act or under Secs. 272 to 276 of the Indian Penal Code (Act XLV of 1860.)

Provided that any document purporting to be a certificate signed by the Director or the Central Food Laboratory shall be final and conclusive evidence of the facts stated therein.

✓ 14. *Import of food and sale of food in railway and other premises.* (1) The Central Government may, by notification in the official Gazette, appoint any person to exercise the powers of a Food Inspector under Sec. 10 and 11—

(a) at any major port, airport or land customs station in respect of any article of food which is being imported through such port or station ;

- (b) in respect of any railway station or group of railway stations where food is being sold.

Provided that the Central Government may, instead of making any appointment under this section, authorize any Food Inspector in any State in which the major port, air port or land customs station or railway station is situate to exercise such powers.

- (2) Every person appointed or authorized under sub-sec. (1) shall be deemed to be a Food Inspector for the purposes of this Act✓

15. *Notification of food poisoning.* The State Government may by notification in the official Gazette, require medical practitioners carrying on their profession in any local area specified in the notification to report all occurrences of food poisoning coming within their cognizance to such officer as may be specified in the notification.

16. *Penalties.* (1) If any person—

- (a) whether by himself or by any person on his behalf imports into India or manufactures for sale, or stores, sells or distributes, any article of food in contravention of any of the provisions of this Act or of any rule made thereunder, or
- (b) prevents a Food Inspector from taking a sample as authorised by this Act, or
- (c) prevents a Food Inspector from exercising any other power conferred on him by or under this Act, or
- (d) being a manufacturer of an article of food, has in his possession, or in any of the premises occupied by him, any material which may be employed for the purpose of adulteration, or
- (e) being a person in whose safe custody any article of food has been kept under sub-sec. (4) of Sec. 10, tampers or in any other manner interferes with such article, or
- (f) uses any report or certificate of a test or analysis made by the Director of the Central Food Laboratory, or by a Public Analyst or any extract thereof for the purpose of advertising any article of food, or
- (g) whether by himself or by any person on his behalf gives to the purchaser a false warranty in writing in respect of any article of food sold by him, he shall,

in addition to the penalty to which he may be liable under the provisions of Sec. 6, be punishable—

- (i) for the first offence, with imprisonment for a term which may extend to one year, or with fine which may extend to two thousand rupees, or with both;
- (ii) for a second offence with imprisonment for a term which may extend to two years and with fine :
 Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgement of the Court, such imprisonment shall not be less than one year and such fine shall not be less than two thousand rupees,
- (iii) for a third and subsequent offences, with imprisonment for a term which may extend to four years and with fine :

Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgement of the Court, such imprisonment shall not be less than two years and such fine shall not be less than three thousand rupees.

(2) If any person convicted of an offence under this Act commits a like offence afterwards it shall be lawful for the Court before which the second or subsequent conviction takes place to cause the offender's name and place of residence, the offence and the penalty imposed to be published at the offender's expenses in such newspapers or in such other manner as the Court may direct. The expenses of such publication shall be deemed to be part of the cost attending the conviction and shall be recoverable in the same manner as a fine.

17. Offences by Companies. (1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of, the business of the business of the company, as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1)

where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation. For the purposes of this section—

- (a) “company” means any body corporate, and includes a firm or other association of individuals; and
- (b) “director” in relation to a firm means a partner in the firm.

18. *Forfeiture of Property.* Where any person has been convicted under this Act for the contravention of any of the provisions of this Act or of any rule thereunder, the article of food in respect of which the contravention has been committed may be forfeited to the Government.

19. *Defence which may or may not be allowed in prosecution under this Act.* (1) It shall be no defence in a prosecution for an offence pertaining to the sale of any adulterated or misbranded article of food to allege merely that the vendor was ignorant of the nature, substance or quality of the food sold by him or that the purchaser having purchased any article for analysis was not prejudiced by the sale.

(2) A vendor shall not be deemed to have committed an offence if he proves—

- (i) that the article of food was purchased by him was the same in nature, substance and quality as that demanded by the purchaser and with a written warranty in the prescribed form, if any, to the effect that it was of such nature, substance and quality :
- (ii) that he had no reason to believe at the time when he sold it that the food was not of such nature, substance and quality ; and
- (iii) that he sold it in the same state as he purchased it:

Provided that such a defence shall be open to the vendor only if he has submitted to the Food Inspector or the local authority a copy of the warranty with a written notice stating that he intends to rely on it and specifying the name and address of the person from whom he received it, and [has also sent a like notice of his intention to that person :

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Provided further that the warranty given by a person resident in any area in which this Act is not in force, shall be a defence to the vender only if the vendor proves to the satisfaction of the Court that he had taken reasonable steps to ascertain and did in fact believe in the accuracy of the statement contained in the warranty.

(3) Any person by whom a warranty as is referred to in sub-section (2), is alleged to have been given shall be entitled to appear at the hearing and give evidence.

20. Cognizance and trial of offence. (1) No prosecution for an offence under this Act shall be instituted except by, or with the written consent of, the State Government or a local authority or a person authorized in this behalf by the State Government or local authority :

Provided that a prosecution for an offence under this Act may be instituted by a purchaser referred to in Sec. 12, if he produces in court a copy of the report of the Public Analyst along with the complaint.

(2) No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence under this Act.

21. Magistrate's power to impose enhanced penalties. Notwithstanding anything contained in section 32 of the Code of Criminal Procedure, 1898 (Act V of 1898), it shall be lawful for any Presidency Magistrate or any Magistrate of the first class to pass any sentence authorised by this Act, in excess of his powers under section 32 of the said Code.

22. Protection of action taken in good faith. No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done under this Act.

23. Power of the Central Government to make rules. (1) The Central Government may, after consultation with the Committee and subject to the condition of previous publication, make rules —

(a) specifying the articles of food or classes of food for the import of which a licence is required and prescribing the form and conditions of such licence, the authority empowered to issue the same and the fees payable thereof ;

(b) defining the standards of quality for, and fixing the limits of variability permissible in respect of, any article of food ;

- (c) laying down special provisions for imposing rigorous control over the production, distribution and sale of any article or class of articles of food which the Central Government may, by notification in the official Gazette, specify in their behalf including registration of the premises where they are manufactured, maintenance of the premises in a sanitary condition and maintenance of the healthy state of human beings associated with the production, distribution and sale of such article or class of articles ;
- (d) restricting the packing and labelling of any article of food and the design of any such package or label with a view to preventing the public or the purchaser being deceived or misled as to the character, quality or quantity of the article ;
- (e) defining the qualifications, powers and duties of food inspectors and public analysts ;
- (f) prohibiting the sale or defining the conditions of sale of any substance which may be injurious to health when used as food or restricting in any manner its use as an ingredient in the manufacture of any article of food or regulating by the issue of licences the manufacture or sale of any article of food ;
- (g) defining the conditions of sale or conditions for licence of sale of any article of food in the interest of public health ;
- (h) specifying the manner in which containers for samples of food purchased for analysis shall be sealed up or fastened up ;
- (i) specifying a list of permissible preservatives, other than common salt and sugar, which alone shall be used in preserved fruits, vegetables or their products or any other article of food as well as the maximum amounts of each preservative ;
- (j) specifying the colouring matter and the maximum quantities thereof which may be used in any article of food ;
- (k) providing for the exemption from this Act or of any requirements contained therein and subject to such conditions, if any, as may be specified, or any article or class of articles of food ;
- (l) prohibiting or regulating the manufacture, transport or

sale of any article known to be used as an adulterant of food ;

(m) prohibiting or regulating —

- (i) the addition of any water, or other diluent or adulterant to any article of food ;
- (ii) the abstraction of any ingredient from any article of food ;
- (iii) the sale of any article of food to which such addition or from which such abstraction has been made or which has been otherwise artificially treated ;
- (iv) the mixing of two or more articles of food which are similar in nature or appearance ;

(n) providing for the destruction of such articles of food as are not in accordance with the provisions of this Act or of the rules made thereunder.

(2) All rules made by the Central Government under this Act shall, as soon as possible after they are made, be laid before both Houses of Parliament.

24. Power of State Government to make rules. (1) The State Government may, after consultation with the Committee and subject to the condition of previous publication, make rules for the purpose of giving effect to the provisions of this Act in matters not falling within the purview of Sec. 23.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may—

- (a) define the powers and duties of the Food (Health) authority and local authority and jurisdiction of food inspectors and public analysts ;
- (b) prescribe the forms of licences for the manufacture for sale, for the storage, for the sale and for the distribution of articles of food or any specified articles of food or class of articles of food, the form of application for such licences, the conditions subject to which such licences may be issued, the authority empowered to issue the same and the fees payable therefor ;
- (c) direct a fee to be paid for analysing any article of food or for any matter for which a fee may be prescribed under this Act ;
- (d) direct that the whole or any part of the fines imposed

under this Act shall be paid to a local authority on realisation ;

- (e) provide for the delegation of the powers and functions conferred by this Act on the State Government or the Food (Health) Authority to subordinate authorities or to local authorities.

(3) All rules made by the State Governments under this Act shall, as soon as possible after they are made, be laid before the respective State Legislatures.

25. *Repeal and saving.* (1) If, immediately before the commencement of this Act, there is in force in any State to which this Act extends any law corresponding to this Act, that corresponding law shall upon such commencement stand repealed.

(2) Notwithstanding the repeal by this Act of any corresponding law all rules, regulations and by-laws relating to the prevention of adulteration of food, made under such corresponding law and in force immediately before the commencement of this Act shall, except where and so far as they are inconsistent with or repugnant to the provisions of this Act, continue in force until altered, amended or repealed by rules made under this Act.

COMMENTARY
ON

THE PREVENTION OF FOOD
ADULTERATION ACT.

(ACT. 37 OF 1954)

Prevention of Food Adulteration Act, 1954

(Act No. XXXVII of 1954)

*(Received the assent of the President on
29th September, 1954)*

An Act to make Provision for the Prevention of Adulteration of Food.

Be it enacted by Parliament in the Fifth year of the Republic of India as follows :—

SYNOPSIS

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| 1. Preamble and its utility, | 14. Absurdity to be avoided. |
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| 3. Utility of the Statement of objects and reasons. | 16. Marginal notes—their use in interpretation of statute. |
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| 10. Test-whether provisions of a statute are mandatory or directory. | 23. Whether a statute is retrospective or prospective? |
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| 25. Effect of repeal of the Provincial Acts. | 28. Intention of the Legislature. |
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| 27. Scope of rules framed under statute. | |

COMMENTARY.

1. Preamble and its utility:—The fundamental rule of interpretation, to which all others are subordinate, is that a statute is to be expounded according to the intent of them that made it. The preamble cannot be made use of to controvert the enactments themselves where they are expressed in clear and unambiguous terms. But the preamble is a key to the statute and affords a clue to the scope of the statute when the words construed by themselves without the aid of the preamble are fairly capable of more than one meaning. There is however, another rule or warning which cannot be too often repeated that you must not create or imagine an ambiguity in order to bring in the aid of the preamble or recital. If the scope and the purpose of the Act is made plain by reference to other relevant statute and other admissible matters of contest or by reference to its preamble—or both then, words *prima facie* of general import in the enacting provisions may be cut down so as to make the Act in its effect correspond with its purpose (a). The title and preamble of a statute undoubtedly throw light on the intent and design of the legislature but should not be read as part of any section of the statute (b). The preamble of a statute has been said to be a good means of finding out its meaning as if it were a key to the understanding of it (c). It is well established that when the provisions of a statute are clear and unambiguous a reference to the preamble is neither legitimate nor permissible. A preamble has been called the key to the mind of the legislature, but where the chambers of the legislative mind are open, no key is required (d). It can be looked into to clear up obscurity in the enactment (e). It discloses the primary intention of the legislature, but cannot over-ride the provisions of the Act (f). In case of ambiguity in the language and the expression of the Act,

(a) *H.R.A. Prince Ernest Augustus of Hanover V Attorney-General*. (1955) 3 All. E.R. 647.

(b) *Brij Bhukan Kalwar V. S. D. O. Siwan* A.I.R. 1955 Patna 1 (A.I.R. 1953 S. C. 274 followed).

(c) *A. Thuangal Kunju V V. M. Venkatachalam*. A.I.R. 1956 S.C. 246= 1956 S.C.J. 323= (1955) 2. S.C.R. 1247=1956 S.C.A. 259= (1956) 29 I.T.R. 349.

(d) *State of West Bengal V. Abdul Qader* 60 C.W.N. 962.

(e) *Jitendra Pratab V. Bhagwati Prasad* A.I.R. 1956 Patna 457.

(f) *S. P. Barna V. State of Assam* A.I.R. 1955 Assam 249.

it is permissible to look at the preamble and even to look at the title of the Act(g).

The preamble can be looked into where:—

- (i) The text of statute is susceptible to different constructions, and is open to doubt.
- (ii) Where it is clear that the legislature intended that the general language used must have some limitation to be put upon it(h).

The preamble may be referred to for removing any difficulty in interpreting the language of any particular section, but it cannot control or delimit the plain and natural meaning of any part of the enactment(i). It can neither extend nor restrict its meaning when the language, object, and scope of the Act are clear and not open to doubt. But in case of doubt the preamble does afford a valuable guide to interpret the statute or any particular section thereof(j).

In order to understand the true nature and scope of the Act it is necessary to ascertain what the evils were which were intended to be redressed by it(k). It is always open to courts of law while construing provisions of an enactment to take into consideration the circumstances in which that enactment came to be passed(l).

2. Statement of objects and reasons :—Laws exist in a number of states in India for the prevention of adulteration of food stuffs, but they lacked uniformity having been passed at different times without mutual consultation between states. The need for Central legislation for the whole country in this matter has been felt since 1937 when a Committee appointed by the Central Advisory Board of Health recommended this step. "Adulteration of food stuffs and other goods" is now included in the concurrent list (III) in the Constitution of India. It has, therefore become possible for the Central Government to enact all India legislation on

(g) Commissioner of Labour V. Associated Cement Companies Ltd. A.I.R. 1955 Bombay 363 = I.L.R. 1955 Bombay 467 = 57 B.L.R. 367.

(h) In re Chacko 67 M.L.W. 1027 = (1954) 2 M.L.J. 737.

(i) Seshyya V. State of Madras 1957-I And. W. R. 160 = A.I.R. 1957 Andh. Pra. 466.

(j) Charles Reginald Zepho Finch V. Mrs. Elizabeth Finch. I.L.R. 1943 Lah. 765 = A.I.R. 1943 Lah. 260 = 45 P.L.R. 313 = 209 I.C. 522 (F.B.).

(k) Sundararamier & Co. V. State of And. Pra. A. I. R. 1958 S.C. 468 = 1958 S.C. 459.

(l) Maharaj Weaving Mills Amritsar V. State of Punjab. A.I.R. 1958 Punj. 210 = (1958-59) 14, F.J.R. 37.

this subject. The Bill will replace all local food adulteration laws where they exist and also applies to those states where there are no local laws on the subject. Among others, it provides for—

- (i) A Central Food Laboratory to which food samples can be referred for final opinion in disputed cases clause (4).
- (ii) A Central Committee for Food Standards consisting of representatives of Central and State Governments to advise on matters arising from the Administration of the Act (clause 3) and (3) the vesting in the Central Government of the rule making power regarding standards of quality for articles of food and certain other matters (clause 22) (m).

3. Utility of the statement of objects and Reasons :—

Although the statement of the objects and reasons appended to a bill is not admissible as an aid to the construction of the Act as passed, yet it may be referred to only for the limited purpose of ascertaining conditions prevailing at the time which necessitated the making of the law(n). The statements of objects and reasons can be legitimately looked into for the limited purpose of ascertaining the conditions prevailing at the time which actuated the sponsor of the bill to introduce the same and the extent and urgency of the evil which he sought to remedy(o). Statement of objects and reasons is certainly not admissible as an aid to the construction of the statute. But it can be referred to for the limited purpose(p).

4. Pre Act Provincial Legislation repealed by Section 25 of the present Act —

1. The Assam Pure Food Act, 1947 (XXII of 1947).
2. The Bengal Ghee Adulteration Act, 1917 (I of 1917).
3. The Bengal Food Adulteration Act, 1919 (VI of 1919).
4. The Bengal Food Adulteration (Amendment) Act, 1925 (V of 1925).
5. The Bengal Food Adulteration (Amendment) Act, 1930

(m) "Vide Statement of Objects and Reasons published in Gazette of India Part II Section 2, No. 20 dated the 15th November (1952)".

(n) Thangal Kunju V. M. Venkatachalam. A.I.R. 1956 S.C. 246=(1955) 2 S.C.R. 1196=1956 S.C.J. 323=(1956) 29 I.T.R. 349=1956 S.C.A. 259.

(o) N.K. Rajaraja Verman Thirumalpad V.K.K. Krishnan Nair. A.I.R. 1958 Mad. 117=69 Mad. L.W. 401=(1956) 2 Mad. L.J. 46.

(p) M.K. Ranganathan V. Govt. of Madras. A.I.R. 1955 S.C. 604=(1955) 25 Com. Cas. 344=(1955) 2 M.L.J. (S.C.) 68=1955 An. W.R. (S.C.) 322=(1955) 2 S.C.R. 374=1955 S.C.A. 841=1955 S.C.J. 515.

(V) of 1930.

6. The Bihar and Orissa Prevention of Adulteration Act, 1919 (II of 1919).
7. The Bihar and Orissa Food Adulteration (Amendment) Act, 1923 (IV of 1923).
8. The Bihar Prevention of Food Adulteration Act, 1947 (V of 1947).
9. The Bombay Prevention of Adulteration Act, 1925 (V of 1925).
10. The Bombay Prevention of Adulteration (Amendment) Act, 1935 (XXIII of 1935).
11. The C.P. & Berar Prevention of Adulteration Act (XXXV of 1949.)
12. The Central Provinces Prevention of Adulteration Act, 1919 (II of 1919).
13. The Central Provinces Prevention of Adulteration (Amendment) Act, 1928 (V of 1928).
14. The Cochin Prevention of Food Adulteration Act, (XIV of 1109-M.E.).
15. The Madras Prevention of Adulteration Act, 1918 (III of 1918).
16. The Madras Prevention of Adulteration (Amendment) Act, 1928 (II of 1928).
17. The Madras Prevention of Adulteration (Amendment) Act, 1932 (III of 1932).
18. The Mysore Prevention of Adulteration Act, (IX of 1921.)
19. The Orissa Prevention of Adulteration and Control of Sale of Food Act, 1938 (X of 1938).
20. The Orissa Prevention of Adulteration Act and Control of Sale of Food (Amendment) Act, (VII of 1950).
21. The Punjab Pure Food Act, 1929 (VIII of 1929).
22. The United Provinces Prevention of Adulteration Act, 1912 (VI of 1912).
23. The U. P. Pure Food Act, 1950 (32 of 1950).
24. The U. P. Adulteration of Vegetable Ghee Act of 1950.

The reference to these Provincial Acts as well as the rules framed there under is necessary as most of the case laws relevant to the interpretation of the various provisions of the present Act is

on the corresponding provisions of the various Provincial Acts. The present Central Act has brought about uniformity in food legislation throughout the country and will bring about uniformity in food standards.

5. Interpretation of Statutes :—The following three cardinal rules of construction of statutes have been laid down in a most recent judgement of the Punjab High Court (q).

(1) The first and foremost rule, to which all others are subordinate, is that where the language of a statute is plain and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation. If a statute speaks for itself clearly, any attempt by the court to make it clearer by imposing another meaning would not be construing the statute but enacting one.

(2) The second rule is that the words appearing in a statute must be presumed to have been used in their popular sense and should be given their ordinary, natural and familiar meaning.

(3) The third rule is that the courts are not at liberty to create an imaginary ambiguity in the terms of statute and later, to clear it up by a long and tedious process of subtle analysis. The courts proceed on the assumption that the legislature knew its own mind, that it understood the meaning of the terms employed by it and that those terms do not contain a hidden meaning which only the study of a powerful intellect can discover.

Literal construction in general has prima facie preference. To arrive at real meaning it is necessary to get exact conception of the aim, scope and object of the whole Act to consider—

- (i) What was the law before the Act was passed ;
- (ii) What was the mischief or the defect for which the law had not provided ;
- (iii) What remedy the Parliament has appointed ;
- (iv) Reasons for the remedy(r).

When the words of statute are clear, hardship or inconvenience cannot alter the meaning of the words used by the legislature (s).

(q) Firm Hazari Mal V. Income Tax Officer, Ambala Cantt. A.I.R. 1957 Pb. 5=58 P.L.R. 499=1956-30 I.T.R. 500

(r) R.M D. Chamarbaugwalla V Union of India. A.I.R. 1957 S.C. 628.

(s) Rama Sawroop Dass V. State of Bihar A.I.R. 1957 Patna 120=(1956) 30 I.T.R. 640=(1956) B.L.J.R. 609.

If words of a statute are clear and unambiguous, they must be given their natural meaning(*t*). Opinion expressed in reports of the committee are inadmissible aids in the construction of statutes (*u*).

It is an accepted principle of law that the same words used in different statutes on the same subject are interpreted to have the same meaning. Indeed if a statutory meaning is attached to certain words in a prior Act, there is a presumption of some force that the legislature intended that they should have the same significance when used in a subsequent Act in relation to the same subject matter (*v*). The true nature of a law has to be determined not on the label given to it in statute but on its substance(*w*).

It is a well known rule of construction that when a statute is ambiguous and is susceptible of two constructions convenience may be taken into consideration in the interpretation thereof. A construction which produces convenient results is favoured. In any case, the courts must steer clear of a construction which would be unjust, oppressive, unreasonable or absurd(*x*). In construing a statute effect must be given to every part of it. The legislature cannot be assumed to have used words without any purpose or by way of redundancy. Inconsistency cannot be attributed to legislature unless it appears on the very face of it(*y*).

6. Interpretation of Penal Statutes :— Though the Penal Statutes are always to be very strictly construed and cannot be enlarged or abridged by intendment, no rule of construction requires that a Penal Statute should be unreasonably construed or construed so as to defeat the obvious intention of the legislature or construed in a manner as would lead to absurd results; on the other hand it is of the utmost importance that the court should endeavour to ascertain the intention of the legislature and to

(*t*) Union of India V. Kanhaya Lal Sham Lal A.I.R. 1957 Punjab 117= 59 P.L.R. 150 (F.B.).

(*u*) Firm Hazari Lal V. Income Tax Officer Ambala Cantt. A.I.R. 1957 Pb. 5=58 P.L.R. 499=1956 30 I.T.R. 500.

(*v*) National Planners Ltd. V. Contributories. A.I.R. 1958 Pb. 230=60 P.L.R. 187=(1958) 28 Com. Cas. 198 (F.B.) (Anantha Subramania Ayyar V Official Receiver. A.I.R. 1957. Trav. Co. 51 Fo 11.)

(*w*) Sundararamier & Co. V State of Andh. Pra. . A.I.R. 1958 S. C. 468=.1958. S.C.J. 459.

(*x*). National Planners Ltd. V Contributories. A.I.R. 1958. Pb. 230=60. P.L.R. 187=(1958) 28 Com. Cas. 198 (F.B.).

(*y*) Somisetli Pichiah. In re 1954 Mad. W.N. 940=(1954) 2 M.L.J (Andh)

give effect thereto(z). The provisions of Penal Statutes must be strictly construed. A man cannot be punished for breach of obligation of which the words imposing that obligation do not give him clear notice(a). A Penal Statute which is to be construed strictly cannot be enlarged or extended by intendment, implications or by any equitable considerations beyond the fair meaning of the language used. Thus, only those persons, offences and penalties which are clearly included will be considered within the operation of the statute and all questions in doubt will be resolved in favour of the person who has contravened the provisions of the law. However, it must be remembered that no rule of construction requires that a penal statute should be unreasonably construed or construed so as to defeat the obvious intention of the legislature or construed in a manner as would lead to absurd results. On the other hand it is of the utmost importance that the court should endeavour to ascertain the intention of the legislature and to give effect thereto(b).

In construing a taxing statute, if two interpretations are possible, the effect is to be given to the one that favours the citizen and not the one that imposes a burden on him.(c).

7. Duty and Powers of the Court in the matter of interpretation of statutes.

The duty of the Court is merely to interpret the law as it stands irrespective of the consequences and pass its orders accordingly. The Court cannot give any relief however equitable it might be, if it is in conflict with the express direction contained in the statute. So long as the words of a statute are vague and ambiguous and are capable of being construed in a manner which is consistent with the equity of the case they be so construed, but where the direction contained in the statute is clear and unambiguous it is not open to the court to disregard that direction. In such a case it is for the legislature to amend the statute if it wants to afford the desired relief.(d). The court cannot construe

(z) *Fakir Mohan V State* A.I.R. 1958 Orissa 118=24 Cut.L.T. 78=I.L.R. (1958) Cut. 113.

(a) *State of Kerala V West Coast Planters Agencies*. A.I.R. 1958 Ker. 41=1957 Ker- L.T. 1065=1957 Ker. L.J. 1044=I.L.R. (1957) Ker. 989=1957-1 Mad. L.J. (Cri) 818=(1958) 28 Com. Cas. 13.

(b) *Teja Singh V The State*, A.I.R. 1952 Pb. 45=1952 Cr. L.J. 131. (*Mcquade V Barnes* (1949) 65 T.L.R. 65 Foll).

(c)- *The Express Mills Vs: Municipal Committee, Wardha*. A.I.R. 1958 S.C. 341.

(d) *M.R. Malholra V State* A.I.R. 1958 All. 492.

the express provisions of a statute by the supposed policy of the legislature underlying the statute(d). The court should guard itself from succumbing to the temptations of reading into a statute, more than what the legislature has said, merely because it thinks would have been reasonable to say so(e). A Judge should not allow himself to be swayed by his own personal wishes, desires or predilection, for rights of the parties to a litigation are not regulated by the whim or caprice of the presiding officer but by the law as applied to the facts of a particular case. If a rule of law prescribed by the statute operates to the prejudice of a person or class of persons application must be made to the legislation and not to the courts(f). The function of a court is to interpret the law and not to amend, modify or alter it. It has to take the Section as it is, and find out the true and correct meaning of the provision and their scope and extent(g).

If in construing a section the Court has to supply some words in order to make the meaning of the statute clear, it will naturally prefer the construction which is more in consonance with reason and justice(h). Where there is any doubt or ambiguity as to correct interpretation of the provisions of a statute it is a well recognised principle of construction that where a Court is dealing with a benevolent legislation, the Court ought to interpret the Act so as to prevent the mischief and to promote the remedy(i).

8. Interpretation of same words used in different statutes :-

It is an accepted principle of law that the same words used in different statutes on the same subject are interpreted to have the same meaning. Indeed if a statutory meaning is attached to certain words in a prior Act, there is a presumption of some force that the legislature intended that they should have the same significance when used in a subsequent Act in relation to the same subject matter (j).

(d) Govt. of A.P. V Mohd A.A Bari & Co. A.I.R. 1958 Andh. Pra. 366=1958 And. L.T. 185=(1958) 1 And. W.R. 299=(1958) 9. S.T.C. 231 (F.B).

(e) Madhusudan Sen Gupta V State of West Bengal A.I.R. 1958 Cal. 25=61 Cal. W.N. 856.

(f) Ram Parkash V Savitri Devi: A.I.R. 1958 Pb. 87=59 P.L.R 549 (F.B).

(g) Ram Narayan V Dinapur Cantt. Board. A.I.R. 1958 Patna 71.

(h) - Ramaswamy Nadar Vs: The State of Madras. A.I.R. 1958 S. C. 56.

(i) :- H.R. Desai Vs: B.M. Batliwala- A.I.R. 1958 Bom: 62=59 Bom: L.R. 1036.

(j) National Planners Ltd. V Contributories, A.I.R. 1958 Pb. 230=60 P.L.R. 187=(1958) 28 Com. Cas. 198 (F.B.) (Anantha Subramania Ayyar V Official Receiver A.I.R. 1957 Trav. Co. 51 Foll.).

9. Application of the rules of grammar in the interpretation of statute :—It is not necessary to try section upon rules of grammar, But if a section has to be tried upon a rule of grammar than obvious thing to do is to require that the application of qualifying words should be confined to the subject which immediately precedes them (k).

10. Test - whether provisions of a statute are mandatory or directory ? :—One of the important tests that must always be employed in order to determine whether a provision is mandatory or directory in character is to consider whether the non-compliance of a particular provision causes inconvenience or injustice and if it does then the court should say that the provision must be complied with and that it is obligatory in its character. It cannot be said that the legislature cannot incorporate in a statute or in a constitution or in a constitution a provision mandatory in character by expressing in the form of positive injunction rather than in the form of negative injunction.(l) It is indeed difficult in many cases to determine whether a particular provision of a statute is imperative or directory. In every case a distinction has to be made between the essential and non essential, between the important and unimportant parts of the statute. As a general rule those whose provisions relate to the essence of the thing to be performed or to matters of substance are mandatory, and those which do not relate to the essence and whose compliance is a mere matter of convenience rather of substance are directory(m).

11. Policy of an Act and its effect on interpretation of statute :—Policies of statutes are relevant for their proper construction. But within the broad frame work of the main purpose and policy of the statute construction is largely, fundamentally and primarily a matter of interpretation of the words used in the statutes. Ideas of policy gathered from extraneous sources extraneous to the text of the statute and its preamble are neither conclusive nor convincing if the actual language subject to interpretation leaves no room for doubt(n)

(k) Flotilla Company Ltd. V Bugwan Dass, 18 1.A. 121 at page 127 =I.L.R. 18 Cal. 620 (P.C.), Babu Lal Sharma V Brij Narain A.I.R. 1958 Jab. L.J. 98. =1958 M.P.C. 148=A.I.R. 1958 mad Pra. 175. (E.B.)

(l) D. A. Koraga Onkar V The state A.I.R. 1958 Bom. 167=59 Bom. L.R. 22.= (1957) Bom. 120=(1957) 2 Lah. L.J. 23.

(m) Parmeshwar Mahaseth V The State. A.I.R. 1958 Pat. 149=1957 B.L J.R. 672(Ajit Kumar Sen V State of West Bengal, A.I.R. 1954 Cal. 49= I.L.R. (1953) 2 Cal. 41 rel. upon.)

(n) Cooperative Milk Society Union V W.B. State. A.I.R. 1958 Cal. 373=62 Cal. W.N. 405,

12. General words and phrases and their interpretation :— General words and phrases however wide and comprehensive they may be in their literal sense must usually be construed as being limited to the actual object of the Act(o).

13. Construction should be harmonious :— It is a settled rule of construction that it is the duty of the court, where it is possible to do so, to construe provisions which appear to conflict so that they harmonise. It is equally well settled that if two constructions are possible the court must adopt that which will implement and which will ensure the smooth and harmonious working of the Act or the rule and discard that which will stultify the apparent intention and therefore eschew the other which leads to absurdity or gives rise to practical inconvenience or makes well established provisions of existing law nugatory (p)

14. Interpretation-Absurdity to be avoided :—Where the words in a statute are plain, the words must be given their natural and ordinary meaning. In construing a statute, words should not be added to the statute. But there is also another rule of interpretation that the legislature in enacting a section does not use superfluous words and that every endeavour should be made to reconcile and avoid any absurdity in the interpretation of the section. Merely the use of similar language somewhere else, unless the said language is construed by a court, would not help a party on a question of construction (q).

15. Interpretation of Statutes where meaning doubtful :— The words of a Statute, when there is a doubt about their meaning are to be understood in the sense in which they best harmonise with the subject of the enactment and the object which the legislature has in view. Their meaning is found not so much in a strictly grammatical or etymological propriety of language, nor even in its popular views, as in the subject or in the occasion on which they are used, and the object to be attained. (r ,

16 Marginal notes-their use in interpretation of statute :— Though the marginal note forms no part of the section, it will be of some assistance in interpreting a statute, in as much as it shows the drift or the trend of the section and elucidates and illumines its meaning. where there is any doubt about the meaning of

(o) :-Empress Mills V. Municipal Committee Wardah. A.I.R. 1958 S.C. 341.

(p) :-Jugal Kishore V.B.N. Rahtogi. A.I.R. 1958 Patna 154.

(q) :-State of Bombay Vs. Bai Moti-A I.R. 1958 Bom: 18=59 Bom: L.R. 663.

(r) :- Workmen, D.T.E. Vs. Management, D.T.E. A I.R. 1958 S.C. 353=(1958-59) 14 F.I.R. 41, Maxwell, Interpretation of Statutes 9th Edition page 55, State of Uttar Pradesh Vs. C. Tobit, A.I.R. 1958 S.C. 414.

the words used. (s). Although the heading of the section, or a marginal note cannot control the clear language of the section, the Court can consider the heading and the marginal note for the purpose of arriving at a conclusion as to what according to the legislature was the purpose of enacting the section. (t).

17. Value of illustrations under a section :— An illustration to a statutory provision merely illustrates principle and ex-hypothesi, it cannot be exhaustive (u)

18. Proviso to sections-its interpretation :— A proviso carves special exception only out of the enacting clause and those who set up any such exception must establish it as being within the words as well as within the reason thereof (v).

19. History of Legislation and its use :— In interpreting a statute although it is useful to keep in mind the historical background, it does not necessarily help to determine the true meaning to be attached to the language employed in the statute. (w).

In construing a statute the Courts are not bound to forget the history or the back-ground against which it was enacted. (x).

20. Inconsistency between the Act and the Rule :— Rules not consistent with the Act-No conviction. Rules not in accordance with the provisions of the Act-for breach of rules cannot stand conviction. (y). Where the rule is not beyond the scope of the rule making power or the preamble of the Act the rule is intra vires qua the powers of the Government. (z). The question recently came in a case under the Madras Prevention of Adulteration Act, 1918. Whereas under section 5(1)(a) of the Madras Act a person who sells any food which is not of the nature,

(s) :- Thirumalpad Vs: K.K. Krishnan Nair-A.I.R. 1958 Madras 117=69 Mad: L.W. 401=(1956) 2 Mad: L.J. 46 (Both Indian and Foreign case law discussed in para No. 17 of 1958 Mad: 117).

(t) :- R.A. Thanawala Vs: M/s Jyoti, Ltd: A I.R. 1958 Bom: 214=59 Bom. Law Reporter 67=(1957) 27 Com Cas, 105.

(u) :- Bama Jena Vs: State. A.I.R. 1958 Orissa 106=I.L.R. (1958) Cut. 131.

(v) :- M.A. Mohamed Vs. R.T. Authority. A.I.R. 1958 Kerala 140 =1957 Ker.L.T. 879=1957 Ker.L.J. 829 (In re Tabrisky 1947-2 All. E.R. 182. Rel.)

(w) :- J.K. Trust Bom: Vs: Commissioner of Income Tax, Bombay. A.I.R. 1958 Bom: 191=59 Bom: L.R. 1255=(1958) 33 ITR 32.

(x) :- Manickam Vs: Assistant Registrar. A. I. R. 1958 Ker: 188=1958 Ker: L.T. 280=1958 Ker: L.J. 322.

(y) :- Amin Chand Vs: State of Punjab. A.I.R. 1953 Punjab 40=54 P.L.R. 493=1953 Cr.L.J. 373=I.L.R.-(1953). Punjab 384 D.B.).

(z) :- In re Venka Bhimarajee. A.I.R. 1949 Mad: 623=50 Cr. L.J. 839=1949 M.W.N. 284=1949-1 M.L.J. 198.

substance or quality of the article demanded by the purchaser can prove facts mentioned in the proviso to Clause (d) of Section 5(1) and also in Section 6(2)(a) of the Act as a defence to a prosecution for selling food of a different quality or substance other than that demanded by the purchaser, he cannot plead any exemption, if for the same offence, he is prosecuted for the breach of R. 37-A (b) of the rules. Obviously no rule can be framed under Section 20 for the purpose of carrying out the purpose of the Act, which is inconsistent with the express provisions of the Act. The rule, therefore, must be construed, if possible, so as to make it consistent with the provisions of the Act and if it is not possible, the rule must give way to the section. That rule must be confined only to cases which do not fall under section 5(1)(a) of the Act. But section 5(1)(a) is comprehensive enough to take it in every case of sale of a substance of a quality inferior to that demanded by the purchaser. If so, R. 37-A cannot apply if a vendor is sought to be prosecuted for selling food which is not of the nature, substance or quality of the article demanded by the purchaser. (a). It is well settled that if reconciliation between a Section and a rule made under the Act is not possible, then the rule which is a subordinate provision must give way. (b). Where liberal construction of statutory rules would make them ultra vires of the rule making authority; they must be so construed as to be intra vires. (c).

21. Subsequent amendment of the Rule whether operates from the date of the amendment or from the original making or publication of the Rule :— This matter came up for consideration recently in a case (d) where it was held that where sub-r(3) of R.I, under Prevention of Food Adulteration Act was subsequently amended by Notification S.R.O. 1202 of 10-5-1956, published in Calcutta Gazette of 19-7-1956, the amended rule must be deemed to have been in existence from the original making and publication of the rules.

22. Doing of an act in anticipation of a statute which would make it an offence, is no offence:— V. a German Director of a German Company, on the eve of the declaration of war between Britain and Germany, attempted to realise as much money as he could and therefore sold the enamels that he had in stock to

(a) :-In re: Y. Ramulu. A.I.R. 1957 And: Pra: 503 (D.B).

(b) :-L.C. Singh Vs. Chief Commissioner of Manipur. A.I.R. 1958 Manipur 1. Maxwell on the interpretation of Statutes 10th Edition, Page 51.

(c) :-Burmah Shell Co. V: Manmad Municipality. A.I.R. 1958 Bom: 43=59 Bom: L.R. 699.

(d) :-Administrator Howrah Municipality V. M/s. Byron & Co. 1958 Cr. L.J. 169 (2) Cal.

D for Rs. 6443. D came with a cheque for that amount on the morning of 2nd September 1939, the day before the war was declared but the accused refused to take a cheque and insisted on being paid in cash. The cash was paid in the afternoon of 2nd September and the accused handed over the money to his wife.

Held that the doing of an act in anticipation of a statute or enactment which would make that act an offence was no offence. At the time when the accused took the money and handed it over to his wife intending to withhold it from the Government of India, there was nothing in law prohibiting the accused from screening the money from the Government of India or the Custodian of enemy Property. Consequently, the acts of the accused done merely to screen the money from the Government of India or the custodian enemy Property without any intention to cause wrongful loss or wrongful gain to any other person or persons, did not constitute an offence. In the absence of evidence that he intended to profit himself at the expense of his firm, of which he was a partner and had appropriated money belonging to a number of persons even though he was entitled to a share of the money, or that he intended to defraud the creditors of the firm, i.e., he acted with the intention of causing wrongful loss to the creditors of the firm, the accused could not be held guilty under Section 407 I.P.C. (d).

23. Whether a statute is retrospective or prospective : The question whether a statute is retrospective or prospective also arose recently in a full bench judgment (e) and it was held that the question is to be decided from the language of the statute. If the terms of the statute are clear and unambiguous and it is manifest that the legislature intended the Act to operate retrospectively, it must unquestionably be so construed. If, however, the terms of the statute do not of themselves make the intention certain or clear, the statute will be presumed to operate prospectively where it is in derogation of a common law right, or where the effect of giving it retrospective operation would interfere with an existing contract, destroy vested right or create a new liability in connection with the past transaction or invalidates a defence which was good when the statute was passed. The statute would operate retrospectively when such intent appears from a consideration of the Act as a whole:

Prima facie every legislation is prospective (f). Even on the

(d) :- In re Baron Von Dinchlage. A.I.R. 1942 Mad 182=1941-M.L.J. 748=1941 M. Cr. C 300=1942 M.W.N. 41=198 I.C. 543=43 Cr. L.J. 395.

(e) :- Pt. Ram Parkash V. Shrimati Savitri Devi 59 P.L.R. 549.(F.B.)

(f) :- Janardhan Reddy V. The state. A.I.R. 1951 S.C. 124=52 Cr. L.J. 391=1951 S.C.J. 98=1950 SCR 940=64 M.L.W. 378.=1951 M.W.N. (Cr) 213. Chandra Sekhara Tavarai V. Shri Bhagwan Radha Krishna. A.I.R. 1947 Oudh 171=1947 O.W.N. 34=229 I.C. 134=1947. O.A. C.C. 34=1947 A.W.R. CC. 3=22 Luck 141=1947 A.W.R. R.E.V. 5.

ordinary principles of penal legislation, a penal provision does not have a retrospective effect (g). No statute should be construed so as to have a retrospective operation, unless such a construction appears very clearly in the terms of the Act or arises by necessary and distinct implication. Even in construing a section, which is to a certain extent retrospective the maxim must be borne in mind as applicable whenever the line is reached at which the words of the section cease to be plain (h) (1898 A. C. 469, Rel. on),

The presumption against a retrospective construction has no application to enactments which affect only the procedure and practice of the Courts, even where the alteration which the statute makes has been disadvantageous to one of the parties—the new procedure would be presumably inapplicable where its application would prejudice rights established under the old. No suitor has a vested interest in the course of procedure or a right to complain, if during his litigation the procedure is changed, provided that no injustice be done (h). Case law discussed

Every statute which takes away or impairs vested rights acquired under existing laws or creates a new obligation or imposes a new duty, or attaches a new disability, in respect of transactions or considerations already past, must be presumed to be intended not to have a retrospective effect (h). [(1894) 1 Q. B. 725, Rel. on.]

No statute should be construed so as to have a retrospective operation, unless its language is such as plainly to require that construction, and this involves the subordinate rule that a statute is not to be construed so as to have a greater retrospective operation than its language renders necessary (h). [(1892) 3 Ch. 402; (1886) 31 Ch. D. 402 and (1893) 2 Q. B. 369, Rel. on]

Enactments in a statute are generally to be construed to be prospective and intended to regulate the future conduct of persons. In the absence of clear word to that effect, a statute will not be construed as taking away a vested right to action already acquired before it was passed (g). [(1848) 2 Ex. 22; 7 Mco. (P. C). 109 and A. I. R 1914 Cal. 806 (S. B). Rel. on.] A statute must be presumed to operate prospectively, unless intension otherwise is stated in express terms (i).

(g) :-Nga Po Ngive V. Emperor. A.I.R 1929 Rangoon 278.=7 Rang. 355=120 I.C. 692=1929 Cr. C. 446=31 Cr. L.J. 174.

(h) :-Abdul Razak Vs Kuldid Narain. A.I.R. 1944 Patna. 147=22 Patna 577=214 I.C. 59=10 B.R. 614.

(i) National Planners V. Contributaries A.I.R. 1958 Punjab 230=1958 P.L.R. 187.

24. Meaning of words not defined in the Act, whether to be taken in dictionary meaning : It is quite permissible to look to the dictionary meaning of the term in the absence of any definition thereof given in the relevant statute (*j*).

25. Effect of repeal of the provincial Acts. See commentary under Section 25 of the Act.

26. Whether the Act is intra vires ? List No. III—*i. e.* the concurrent list given in the seventh schedule of the Constitution of India contains item No. 18 “Adulteration of Food stuffs and other goods”. Under Article 246 of the Constitution of India both the Parliament and the State Legislatures have powers to make laws with respect to any of the matters enumerated in list No. III of the Constitution. So this Act is intra vires of the Central Legislature.

27 Scope of Rules framed under Statute. In some statutes, (as under sections 23 and 24 of the present Act) power is given to frame rules and when so framed they are made part of the statute. In such a case it might be permissible to supplement the provisions of the statute itself, within limits. But where rules are framed for carrying out the purposes of the Act such rules cannot travel beyond the four corners of the Act itself. (*j*). In the case of statutory rules the court can always go into the question whether they are inconsistent with the statute under which they are made (*k*). It does not necessarily follow that because the rule making authority takes a particular view of the law that it is necessarily the right view. If a rule goes beyond the scope of the authority conferred by a statute, then the rule would obviously be bad and the rule cannot extend the authority of an officer conferred upon him by the Legislature. But in cases where there is ambiguity in the language used by the Legislature, or where more than one construction is possible, then the rules framed may help the Court in coming to right conclusion as to the construction to be placed upon a particular provision in the law (*l*).

28. Intention of the Legislature : Ever since the dawn of civilisation Courts of law have been continuously engaged in ascertaining the intention of the law-making power and in com-

(i) :-Commr of I.T., West Bengal, Calcutta V. Benov Kumar Shabas Roy, 32 I.T.R. 466—A.I.R. 1957 S.C. 768—1957 S.C.J. 740—(1957) 2 Mad. L.J. (S.C) 145. (1886 16 Q.B.D. 636, (1914) 1 K.B. 646, Rel on).

(k) :-Huzrat Syed V. Commissioner of Wakafs A.I.R. 1954 Cal. 436.

(l) :-Promod C. Bhat V. Kanwar Raj Nath, 56 Bom. L.R. 873—A.I.R. 1954 Bom. 518 (D.B).

plying loyally and faithfully with the wishes of the said powers. As the intention of the Legislature is manifested in the Statute itself such intention must be determined primarily from the language which the Legislature has chosen to employ. If the words of the Statute are clear or unambiguous, they must be given the ordinary, natural and recognised meaning attributed to them, unless they have acquired a technical or special legal meaning, or it is necessary to obviate repugnancy or inconsistency, or it is necessary to give effect to the manifest intention of the Legislature. The Statute must be taken as it stands without any judicial addition or subtraction, for the Court has no more authority to enlarge, stretch or expand a Statute under the guise of interpretation than to restrict, constrict or qualify its provisions (m). It is a settled rule of construction that to ascertain the legislative intent, all the constituent parts of a statute are to be taken together and each word, phrase, or sentence is to be considered in the light of the general purpose and object of the Act itself. The title and preamble, whatever their value might be as aids to the construction of a statute, undoubtedly throw light on the intent and design of the Legislature and indicate the scope and purpose of the legislation itself (n). When a question arises as to the interpretation to be put on an enactment, what court has to do is to ascertain "the intent of them that make it", and that must of course be gathered from the words actually used in the statute. That, however, does not mean that the decision should rest on a literal interpretation of the words used in disregard of all other materials. The literal construction then has, in general, but prima facie preference. To arrive at the real meaning, it is always necessary to get an exact conception of the aim, scope and object of the whole Act; to consider (1) what was the law before the Act was passed; (2) What was the mischief or defect for which the law had not provided; (3) What remedy Parliament has appointed; and (4) The reason of the remedy (o). The provision of a statute will have to be construed by its own words and the intention of the Legislature has to be ascertained from those words which are the only repository of the Legislature's intention. However, the court may refer to the history of the provision incidentally when it considers it not useful to take a

(m) :- Union of India V. Kanhayalal Shamlal. I L.R. (1957) Punjab 255=59. Punjab L.R. 150=A.I.R. 1957 Punj. 117 (F.B).

(n) :- Popat Lal Shah V. State of Madras. (1953) 1 M.L.J. 739=(1953) S.C.J. 369=1953 Cri. L.J. 1105=66 Mad. L.W. 573=1953 S.C.R. 677=A.I.R. 1953 S.C. 274.

(o) :- Chamar baugwalla V. Union of India. A.I.R. 1957 S.C. 528=1957 S.C. 912=1957 M.P.C. 630=(1957) 2 An. W.R. 76=1957 M.L.J. (Cr.) 547=1957 S.M.L.J. (S.C) 76=59 Bom. L.R. 973 (1584) 3 Co. Rep. 7 a and (S) A.I.R. 1955 2.C. 66=1955 S.C.J. 672=(1955) 2 Mad. L.J. (S.C) 168 Rel. On).

look at the back-ground of the provision (p).

29. Reference to proceedings of Legislature in interpretation of statute:— The speeches made by the members of the House in the course of the debate are not admissible as extrinsic aids to the interpretation of statutory provisions (q). Though the proceedings of the Legislature cannot be taken into consideration in interpreting the statute 1922 A. C. 339 and 22 Cal. 788, ref. to) where the subject-matter with which the Legislature was dealing and the facts existing at the time with respect to which Legislature was legislating require clarification it is permissible to take them into consideration because these facts are "legitimate topics to consider in ascertaining what was the object and purpose of the Legislature in passing the Act they did" (r). It is no doubt, true that proceedings of the Legislature cannot ordinarily be looked into in making judicial construction of a statute and the plain meaning of the language used must be adopted. When, however, there is any difficulty or ambiguity as to the interpretation of any section there is no reason why assistance should not be obtained from discussions in the Legislature as to the scope and intention of the legislation. In case of remedial statute the discussions in the legislature may assist in ascertaining what is the relief contemplated by the statute and what is the class intended to be relieved (s).

PRELIMINARY

1. *Short title, extent and commencement.* (1) This Act may be called the Prevention of Food Adulteration Act, 1954.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the

(p) :-Commr. of I T., West Bengal V. State Bank of India Calcutta. A.I R. 1956 Cal. 636.

(q) :-Aswini Kumar Ghose V. Arbinda Bose. 1952 S.C.J 5 8=1953 S.C.R. 1=A.I.R. 1952 S.C. 369.

(r) :-Pratap Vikram Shah V. Upendra Bahadur Shah. A.I.R. 1952 All. 6 (F.B).

(s) :-Deo Rajin Debi V. Satyadhyan Ghoshal. 58 Cal. W.N. 64=A.I.R. 1954 Cal. 119 (D.B).

Central Government may by notification in the official Gazette, appoint.

SYNOPSIS.

- | | |
|-----------------------|------------------------------------|
| 1. Title of the Act. | 3. India defined. |
| 2. Extent of the Act. | 4. Date of enforcement of the Act. |

COMMENTARY.

1. Title of the Act : The title of a statute is an important part of the Act and may be referred to for the purpose of ascertaining its general scope and of throwing light on its construction, although it cannot over-ride the clear meaning of the enactment (a). The title of an Act is undoubtedly a part of the Act itself and it is legitimate to use it for the purpose of interpreting the Act as a whole and ascertaining its scope (b).

2. Extent of the Act : The Act extends to the whole of India except the State of Jammu and Kashmir. The said State has enacted separate and similar legislation and rules for the prevention of adulteration of food.

3. India defined : According to Article 1 of the Constitution of India the following States and territories have been included in India or Bharat as given in the first schedule to the Constitution of Indian States.

(1) Andhra Pradesh (2) Assam (3) Bihar (4) Bombay (5) Kerala (6) Madhya Pradesh (7) Madras (8) Mysore (9) Orissa (10) Punjab (11) Rajasthan (12) Utter Pradesh (13) West Bengal (14) Jammu and Kashmir.

The Union Territories. (1) Delhi (2) Himachal Pradesh (3) Manipur (4) Tripura (5) The Andaman and Nicobar Islands (6) Laccadiveminicay and Amindivi Islands.

The word 'India' has also been defined in the General Clauses Act (X of 1897) Section 3(28) as follows :—

Section 3(28) 'India' shall mean,—

(a) as respects any period before the establishment of the Dominion of India, British India together with all Territories of Indian Rulers then under the suzerainty of His Majesty, all territories under the suzerainty

(a) Aswani Kumar Ghose Vs: Arbinda Bose A.I.R. 1952 S:C. 369=1952 S.C.J. 568=1953 S.C.R. 1.

(b) State Vs. Hyderali A.I.R. 1955 Hyd. 128=I.L.R. 1955 Hyd. 214=1955 Cr. L.J. 798 (F.B.)

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of such an Indian Ruler, and the tribal areas.

- (b) as respects any period after the establishment of the Dominion of India and before the commencement of the Constitution, all territories for the time being included in that dominion ; and
- (c) as respects any period after the commencement of the Constitution all territories for the time being comprised in the territory of India.

4. Date of enforcement of the Act : The Act was published in the Gazette of India Extraordinary Part II. Section 2, dated 30th of September 1954. The President of the Union of India gave his assent to the Act on 29th September 1954. The Act has come into force on 1st of June 1955, as published in the following Notification :

S. R. O. 1085. Ministry of Health, New Delhi, dated 9th May, 1955. In exercise of the powers conferred by sub-section (3) of section 1 of the Prevention of Food Adulteration Act, 1954 (37 of 1954), the Central Government hereby appoints the 1st day of June 1955 as the date on which the said Act shall come into force. (No. F. 9-4/55-D.)

2. Definitions. In this Act, unless the context otherwise requires,—

- (i) “Adulterated”—an article of food shall be deemed to be adulterated —
 - (a) if the article sold by a vendor is not of the nature, substance or quality demanded by the purchaser and is to his prejudice, or is not of the nature, substance or quality which it purports or is represented to be ;
 - (b) if the article contains any other substance which affects, or if the article is so processed as to affect, injuriously the nature, substance or quality thereof;
 - (c) if any inferior or cheaper substance has been substituted wholly or in part for the articles so as to affect injuriously the nature, substance or quality thereof;
 - (d) if any constituent of the article has been, wholly or in part, abstracted so as to affect

injuriously the nature, substance or quality thereof;

- (e) if the article had been prepared, packed or kept under insanitary conditions whereby it has become contaminated or injurious to health;
- (f) if the article consists wholly or in part of any filthy, putrid, disgusting, rotten, decomposed or diseased animal or vegetable substance or is insect infected or is otherwise unfit for human consumption ;
- (g) if the article is obtained from a diseased animal;
- (h) if the article contains any poisonous or other ingredient which renders it injurious to health;
- (i) if the container of the article is composed, whether wholly or in part, of any poisonous or deleterious substance which renders its contents injurious to health;
- (j) if any colouring matter other than that prescribed in respect thereof and in amounts not within the prescribed limits of variability is present in the article ;
- (k) if the article contains any prohibited preservative or permitted preservative in excess of the prescribed limits ;
- (l) if the quality or purity of the article falls below the prescribed standard or its constituents are present in quantities which are in excess of the prescribed limits of variability;
- (ii) "Central Food Laboratory" means any laboratory or institute established or specified under Sec. 4;
- (iii) "Committee" means the Central Committee for Food Standards constituted under Sec. 3;

- (iv) "Director of the Central Food Laboratory" means the person appointed by the Central Government by notification in the Official Gazette as the Director of the Central Food Laboratory and includes any person appointed by the Central Government in like manner to perform all or any of the functions of the Director under this Act ;
- (v) "Food" means any article used as food or drink for human consumption other than drugs and water and includes—
 - (a) any article which ordinarily enters into, or is used in the composition or preparation of human food, and
 - (b) any flavouring matter or condiments ;
- (vi) "Food (Health) Authority" means the Director of Medical and Health Services or the Chief Officer incharge of Health administration in a State by whatever name he is called ;
- (vii) "Local area" means any area, whether urban or rural, declared by the State Government, by notification in the official Gazette, to be local area for the purposes of this Act ;
- (viii) "Local authority" means in the case of—
 - (1) a local area which is—
 - (a) a municipality, the municipal board or municipal corporation ;
 - (b) a cantonment, the cantonment authority ;
 - (c) a notified area, the notified area committee :
 - (2) any other local area, such authority as may be prescribed by the State Government under this Act ;
- (ix) "Misbranded"—an article of food shall be deemed to be misbranded—

- (a) if it is an imitation of, or is a substitute for, or resembles in a manner likely to deceive, another article of food under the name of which it is sold, and is not plainly and conspicuously labelled so as to indicate its true character ;
- (b) if it is falsely stated to be the product of any place or country ;
- (c) if it is sold by a name which belongs to another article of food ;
- (d) if it is so coloured, flavoured or coated, powdered or polished that the fact that the article is damaged is concealed or if the article is made to appear better or of greater value than it really is ;
- (e) if false claims are made for it upon the label or otherwise ;
- (f) if, when sold in packages which have been sealed or prepared by or at the instance of the manufacturer or producer and which bear his name and address, contents of each package are not conspicuously and correctly stated on the outside thereof within the limits of variability prescribed under this Act ;
- (g) if the package containing it or the label on the package bears any statement, design or device regarding ingredients or the substances contained therein, which is false or misleading in any material particular ; or if the package is otherwise deceptive with respect to its contents ;
- (h) if the package containing it or the label on the package bears the name of a fictitious individual or company as the manufacturer or producer of the article ;
- (i) if it purports to be, or is represented as

being, for special dietary uses, unless its label bears such information as may be prescribed concerning its vitamin mineral, or other dietary properties in order sufficiently to inform its purchaser as to its value for such uses ;

- (j) if it contains any artificial flavouring, artificial colouring or chemical preservative, without a declaratory label stating that fact, or in contravention of the requirements of this Act or rules made thereunder ;
- (k) if it is not labelled in accordance with the requirements of this Act or rules made thereunder :
- (x) "Package" means a box, bottle, casket, tin, barrel, case, receptacle, sack, bag, wrapper or other thing in which an article of food is placed or packed ;
- (xi) "Premises" include any shop, stall or place where any article of food is sold or manufactured or stored for sale ;
- (xii) "Prescribed" means prescribed by rules made under this Act ;
- (xiii) "Sale" with its grammatical variations and cognate expressions, means the sale of any article of food, whether for cash or on credit or by way of exchange and whether by wholesale or retail, for human consumption or use, or for analysis, and includes an agreement for sale, an offer for sale, the exposing for sale or having in possession for sale of any such article, and includes also an attempt to sell any such article ;
- (xiv) "Sample" means a sample of any article of food taken under the provisions of this Act or of any rules made thereunder ;

- (xv) the words "unwholesome" and "noxious" when used in relation to an article of food mean respectively that the article is harmful to health or repugnant to human use.

SYNOPSIS

1. Definition of adulterated articles of food.
2. Definition of adulteration in some previous Provincial Acts
3. Section 2 (i) (a).
4. Section 2 (i) (a) consists of two independent parts.
5. Nature, Substance or quality.
- 6 Part 1 of Sec. 2 (i) (a)
7. Whether a particular article of food is of the nature, substance or quality demanded by the purchaser or not is a question of fact.
8. To the prejudice of the purchaser.
- 9 Relevant provisions of the Bombay & U.P. Acts.
10. Difference of proof in cases falling under part I or part II of Sec. 2 (i) (a).
11. Sec. 2 (1) (a) Part II Not of the nature, substance or quality which it purports or is represented to be.
12. Question whether an article of food is adulterated or not is a question of law.
13. Sec. 2 (i) (b) explained.
14. a few cases of adulteration and non-adulteration relevant under this sub-clause.
15. Cases of no adulteration.
16. Sec. 2 (1) (c) Explained.
17. A few cases of adulteration under Sec. 2 (1) (c) explained.
18. Sec 2 (i) (d) explained.
19. Constituent,
20. Some cases of adulteration under this sub-clause.
21. Section 2 (1) (e)—Explained
22. Section 2 (i) (f) & (g)—Explained.
23. Filthy.
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28. Deleterious.
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31. Section 2 (1) (k)—Explained.
32. Section 2 (1) (l)—Explained.
33. Provincial Rules regarding articles of food for which no standard is fixed under the rules framed by the Central Government.
34. Section 2 (ii)—Central Food Laboratory.
35. Central Food Laboratory—its establishment etc.
36. The functions of the Central Food Laboratory.
37. Section 2 (iii)—Committee.
38. Section 2 (iv) Director of the Central Food Laboratory.
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40. Sub-clause explained.
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41. Definition of food as given in some Provincial Acts.
43. Articles judicially held to be articles of food.

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44. Section 2 (vii)—Local area.
45. Fixation of Local Area and its necessity.
46. Punjab Notification.
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48. Bihar Notification.
49. Andhra Notification.
50. West Bengal Notification.
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54. State Government Notifications under Sec. 2 (viii) of some of the states.
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58. Section 2 (ix)—Misbranded.
59. "Misbranded" its import, manufacture for sale etc. prohibited.
60. "Misbranded" Explained and analysed.
61. Rules regarding labelling and packing given in part vii of the Rules.
62. Misuse of another man's property mark or trade mark.
63. Some judgements helpful in deciding whether there has been misbranding by misuse of another man's property mark or trade mark.
64. Sec. 2(x)—Package.
65. Sec. 2 (xi)—Premises.
66. Sec. 2 (xii)—Prescribed.
67. Sec. 2 (xiii)—Sale.
68. Definition analysed.
69. Definition of sale under the Punjab Pure Food Act, the U.P. Pure Food Act, and the Sale of Goods Act.
70. Definition of Sale extraordinarily wide under the Central Act.
71. Exchange distinguished from Sale.
72. Cases illustrating to clear meaning of the word "Sale".

COMMENTARY

1. Definition of adulterated article of Food : The definition of adulterated article of food is most comprehensive to cover all possible cases of adulteration. The present Prevention of Food Adulteration Act, is intended to protect the public from using adulterated articles of food. Provincial Legislative enactments were considered insufficient to check and stop adulteration and so the present more stringent Central Act was passed to ensure rooting out this evil of adulteration. Unless an article of food alleged to be adulterated is definitely proved to be covered by any of various sub-clauses of section 2 (i), no offence is committed and there can be no conviction.

2 Definition of adulteration in some previous Provincial Acts:

(A) *Punjab Pure Food Act 1929* Section 4 runs as follows : "For the purposes of this Act any food shall be deemed to be adulterated :

- (1) if it contains or is mixed or diluted with any substance which diminishes in any manner its nutritive

or other beneficial properties as compared with such food in a pure and normal state or which in any other manner operates or may operate to the prejudice or disadvantage of the purchaser or consumer ;

- (ii) if any substance or ingredient has been extracted or remitted therefrom and by reason of such extraction or omission the nutritive or other beneficial properties of the food as sold are less than those of the article in its pure and normal state, or the purchaser or consumer is or may be in any other manner prejudiced thereby ;
- (iii) if it contains or is mixed or diluted with any substance of lower commercial value than such food in a pure and normal state ;
- (iv) if it does not comply with the standard prescribed by any rules made under this Act.

(B) The Bihar Prevention of Food Adulteration Act, 1947 (Bihar Act No V of 1948),

Section 3. "In this Act, unless there is anything repugnant in the subject or context :

- (a) an article of food shall be deemed to be "Adulterated" if it has been mixed or packed with any other substance or if any part of it has been extracted, so as in either case to reduce or lower or injuriously affect its quality, substance or nature ;

(C) The Asam Pure Food Act, 1947 (Act 32 of 1947).

Section 2. In this Act, unless there is any thing repugnant in the subject or context :

- (1) an article of food shall be deemed to be "adulterated" :
 - (i) if in any one or more of the following respects, namely, nature, substance, consistency, colour, smell, or quality, it is not the same as such food in its pure and normal state, or as it purports or is represented to be ; or
 - (ii) if any ingredient or material has been added to increase the bulk, weight or measure, or to conceal the inferior quality of the food ; or
 - (iii) if any part of it has been abstracted so as to diminish its nutritive value or to affect injuriously its nature, substance or quality ; or
 - (iv) if it is decayed, putrefied, weevil infested or is otherwise unfit for human consumption ; or

- (v) if it does not comply with any standard laid down by or under this Act or any other law for the time being in force ; or
- (vi) if it contains or is mixed or diluted with any substance in such quantity as is to the prejudice of the purchaser or consumer or in such proportion as diminishes in any manner the food value or nutritive qualities which it possesses in its pure, normal and undeteriorated condition.

(D) The term “Adulterated” is not defined in the U. P. Pure Food Act (XXXII of 1950).

(E) In the Bengal Food Adulteration Act 1919 (VI of 1919) the word is defined in Section 2(1) as follows :—

2 (1) An article of food shall be deemed to be “adulterated if it has been mixed or packed with any other substance, or if any part of it has been abstracted so as in either case to affect injuriously its quality, substance or nature.

(3) Section 2 (1) (a), An article of food shall be deemed to be adulterated if the article sold by a vendor is not of the nature, substance or quality demanded by the purchaser and is to his prejudice, or not of the nature, substance or quality which it purports or is represented to be.

4. Section 2 (1) (a) consists of two independent parts :

- (i) An article of food is to be deemed adulterated if the article sold by a vendor is not of the nature, substance or quality demanded by the purchaers and is to his prejudice.
- (ii) An article of food is to be deemed adulterated if it is not of the nature, substance or quality which it purports or is represented to be.

Each part is quite independent of the other.

5 Nature, substance or quality :— Under section 23 (b) of the Act, the Central Government has been empowered to make rules defining the standards of quality for and fixing the limits of variability permissible in respect of, any article of food.

6. Part 1 of Section 2 (1) (a) :— An article of food demanded by a purchaser and sold by a vendor must be of the nature, substance and quality demanded. If the article sold is not of the nature, substance or quality demanded and is so to the prejudice of the purchaser, the said article of food is to be deemed adulterated and the vendor is guilty of an offence under the Act.

7. Whether a particular article of food is of the nature, substance or quality demanded by the purchaser or not is a question of fact :—The question whether the particular article sold was not of the nature, substance or quality demanded by the purchaser so as to contravene the provisions of Section (1)(a) is a question of fact to be determined on evidence (a).

8. To the prejudice of the purchaser :— The expression to the 'prejudice of the purchaser' has been differently interpreted by different Judges though in the face of the clear language the expression seems to mean that the adulterated article sold on demand to a purchaser must be to the prejudice of the particular purchaser. But it has been interpreted as follows :—

The expression "to the prejudice of the purchaser" means prejudice to the generality of purchasers and not prejudice to the actual purchaser in a particular case. A particular person in a given case may not be prejudiced by the purchase, but if an ordinary person who purchased an article of food was likely to be prejudiced by the purchase, there would be committed an offence, (b) [per Vyas Judge].

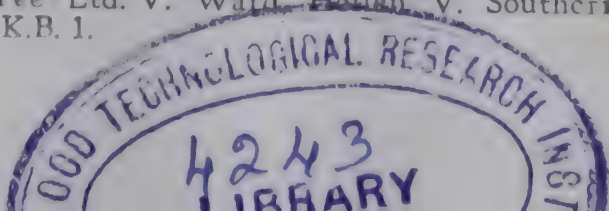
The words "to the prejudice of the purchaser" denote to the prejudice of the purchaser who actually purchases the article which is not of the nature, substance or quality demanded by the purchaser. The intention, as is evidenced by the words 'which is not of the nature, substance or quality demanded by or on behalf of the purchaser' was that the purchaser must get the article which he demands and it is not a matter for the vendor to enquire into the question as to why the purchaser wanted the article and defend charge made against him for selling an adulterated article by pointing out that no actual loss was caused to the purchaser (b). [per Bavdekar Judge]. The sale might be to the prejudice of the purchaser, although the purchaser had special knowledge, not derived from information given by the seller, that the article sold was not of the nature, substance, and quality demanded by him and that the test was whether the sale would have been to the prejudice of a purchaser who had not the special knowledge (c). Where the matter or ingredient added to the article of

(a) Parsram Tekchand V. Emperor A.I.R. 1940 Sindh 127=(1940) Kar 282-13 R.S. 54=190 I.C. 159=41 Cr. L.J. 839, Webb V. Knight (1877) 2 Q.B.D. 530 Paseler V. Stevenitt, (1876), 41 J.P. 136 D.C. Gouler V. Rook, Bent V. Ormerod, (1901) 2 K.B. 290 Wolfendeh V. McCullohk. (1905) 69 J.P. 228,

(b) State V. Bharatshanker, A.I.R. 1954 Bom. 306=56 Bom. L.R. 245=1954 Cr. L.J. 924 (D.B.) per Vyas Judge.

(b) do- (per Bavdekar Judge).

(c) Pearks, Gunston and Tee Ltd. V. Ward, Hellen V. Southern counties Dairies Company (1902) 2 K.B. 1.



food is not injurious to the health of the purchaser, if it is shown that the addition was required for the production or preparation of the article, the sale of the article would not be deemed "to the prejudice of the purchaser". But where it is established that the addition of fats and oils which was apparently not injurious to the health of the purchaser was made with the object of increasing the bulk of the 'ghee' and its weight and this was obviously done fraudulently, the sale of ghee was "to the prejudice of the purchaser", and as such it was an offence (d). The words "to the prejudice of the purchaser" have been inserted in the section in order to ensure that the supply of an article, superior in quality to that demanded, would not ordinarily be regarded as an offence under the section. These words mean to the prejudice of an ordinary person who purchases or may purchase such an article. If an ordinary person is likely to be prejudiced by the purchase of such an article, the offence would be committed, even though the actual purchaser in a particular case may not have been prejudiced. Therefore even when an inspector purchases an article or sample of food for the purpose of analysis, the transaction is a sale within meaning of the Act (e).

Where no rules are prescribed the inference is that thing of pure quality has to be sold. Purchaser asking for honey, given an admixture of 38% of cane-sugar in the absence of rules, pure honey should have been supplied. It was held that the seller is punishable under S. 5 (1) (d)-Madras Prevention of Adulteration Act. (III of 1918) (f).

9. Relevant Provision of the Bombay & U. P. Acts :—The above judgments being under similar provisions of the Bombay & U. P. Acts, for the sake of reference their relevant provisions are given below :—

Section 4 (1) (a) Bombay Prevention of Adulteration Act :—Any person who sells or causes to be sold or offers for sale to the prejudice of the purchaser any article of food which is not of the nature, substance or quality demanded by or on behalf of the purchaser shall be punishable.

Section 4 of the U. P. Prevention of Adulteration Act, (6 of 1912) runs as follows :—

4 (1) Whoever sells to the prejudice of the purchaser any article of food or any drug which is not of the nature, substance

(d) Ram Badal V. The State, A.I.R. 1952 All. 82=1951 A.L.J. 556=1951 A.W.R. (H.C). 423=1951 All. Cr. C. 85 (Luck. Bench).

(e) State V. Amratlal Bhogilal, A.I.R. 1954 Bom. 216.

(f) The Public Prosecutor V. Sanndhi Sri ranganayakulu A.I.R. 1949 Mad. 629-1949 M.W.N. 282=1949=2 M.L.J. 15=50 Cr. L.J. 893.

or quality of the article of drug demanded by such purchaser, or sells or offers or exposes for sale or manufactures for sale any article of food or any drug which is not of the nature, substance or quality which it purports to be or which is sold or exposed for sale in a manner contrary to any regulations issued by the local Govt. under Sub-S. (f), (g) or (h) or S. 14 shall be punished for the first offence with fine which may extend to two hundred rupees and for a second or any subsequent offence with fine which may extend to one thousand rupees or imprisonment of either description not exceeding three months or both :

Provided that no article shall be deemed to have been sold to the prejudice of purchaser in the following cases, that is to say.

- (a) Where any matter or ingredient not injurious to health has been added to the food or drug because the same is required for the production or preparation thereof as an article of commerce in a state fit for carriage or consumption. and not fraudulently to increase the bulk, weight or measure of the food or drug or conceal the inferior quality thereof.

The meaning of the words "to the prejudice of the purchaser" have been very well explained in Halsbury's Laws of England 2nd Edition Volume XV Section 224 and 245, in the following words : -

"It is no offence to give a purchaser an article superior to that for which he asks, provided he is not prejudiced. The prejudice, however, is not confined to pecuniar prejudice, nor to prejudice arising from the consumption of unwholesome food, nor to prejudice or damage to the actual purchaser in the particular case. But there is prejudice whenever there is a sale of an article in such a state that an ordinary unskilled person would have been prejudiced if he had received it in response to his demand for an article of that denomination, although for some reason, peculiar to himself, the actual purchaser is not prejudiced. It is no defence to a prosecution to allege that the purchaser having bought for analysis, was not prejudiced by the sale".

A purchaser is not prejudiced if notice is given to him at the time of sale that the article sold to him is not of the nature, substance, or quality he demands, so long as such notice is clear and unequivocal.

10 Difference of proof in cases falling under Part I or Part II of S 2(1)(a) :— The difference between a sale falling under Part I and a sale falling under Part II is that whereas in the first part it is the purchaser who demands the article of food or any drug of a certain nature, substance or quality and the seller does not expressly say anything about the nature, substance or quality. In

the second Part it is the seller who says what the nature, substance or quality of the article is. In the first part of the section prejudice to the purchaser has to be proved in addition to the fact that the article is not of the nature, substance or quality demanded by the purchaser. In the second part prejudice to the purchaser has not to be proved. It is enough that the seller declares an article to be of a certain nature, substance or quality. In the first part the seller does not give any express warranty. In the second part the seller gives an express warranty. Where, therefore, the seller gives an-express warranty that the article is cent percent pure, then even though the impurity is negligible he commits an offence under Part II but he commits no offence if he does not give an express warranty and the case falls within the first part provided he can prove that the small impurity in the article supplied is due to its being unavoidably intermixed in the process of production preparation or conveyance of the article. (A case under the corresponding provision of S. 4 of the U. P. Prevention of Adulteration Act) (g).

The first part of the section 2(1)(a) applies to a case where the article has actually been sold to a purchaser while the second portion can apply even while the article is offered or exposed for sale or is manufactured for sale without there being a purchaser. In the latter case, there can be no prejudice to the purchaser in fact and for the second portion of the section to be applicable, all that is necessary is that an article of food not of the nature, substance or quality which it purports to be should either have been sold or offered or exposed for sale or manufactured for sale. Where, therefore, a vendor who has a license for sale of pure vegetable oil exposes for sale vegetable oil mixed with ghee, he is guilty of the offence under second part, (h)

11. Sec 2(1)(a) Part II.

Not of the nature, substance or quality which it purports or is represented to be : — An article can be said to purport to be of a particular nature either when there is label upon it showing that it is of that nature a quality or there is a sign board or advertisement indicating that the article sold is of that nature or the seller himself orally affirms that it is of that nature or quality (i)

Where a person purports to sell mustard oil for use as human food and if the mustard oil which he sells is actually found

(g) Emperor V. Purun Mal. A.I.R. 1948 All. 403=1948 A.W.R. (H.C.) 195=49 Cr. L.J. 686.

(h) Suraj Narain V. Municipal Board Lucknow. 1939 O.W.N. 179=40 Cr. L.J. 301=11 R.O. 218=1939 A.W.R. 49=A.I.R. 1939 Oudh 105=179 I.C. 993.

(i) Emperor V. Purn Mal. A.I.R. 1948 All. 403 at page 404=1948 A.W.R. (H.C.) 159=49 Cr. L.J. 686.

on analysis to be not genuine in the sense that it is not the article which it purports to be or is represented to be, or if it falls below the standard prescribed by rules the vendor becomes liable to penalty. In such a case it is not necessary to prove that the mixed oil would be injurious to public health. It is sufficient to show that the article is not what it purports to be or that it is not of the standard required by the rules (j).

It cannot be held that no offence can be committed, in respect of an article, regarding which no standard of purity has been fixed by the Government. A Hart from the standard fixed by Government a person may be guilty of an offence if he sells any article of food or any drug which is not of the nature, substance or quality which it purports to be. The question for consideration in such a case is whether the accused has sold an article not of the nature, substance or quality of which it purported to be, and the question for consideration is not whether it is one of the article in respect of which the Government had made rules, or not (k).

✓ **12. Question whether an article of food is adulterated or not is a question of law :—** Whether an article (ghee) in the present case is to be deemed adulterated or not is a question of law and it is not a matter on which a Chemical Examiner should be required to express his opinion. What he has to do is to state the result of his analysis and leave the court to determine whether on those results the offence charged is proved or not (l).

The question whether the food is adulterated or not is one for the court to decide and not for the Public Analyst. The form prescribed by the Act clearly contemplates that the Analyst is merely to give his opinion as to whether the article which he analyses has an excess or deficiency in constituents prescribed by the standard for the articles of food. It is then for the Courts to come to the conclusion after considering the opinion of the Analyst on this point whether the food is adulterated or not (m).

13. Section 2 (1) (b)—Explained :— According to this subsection if any foreign substance is added to the article of food in question, which affects injuriously the nature, substance or quality thereof or if the article of food, in course of manufacture or preparation is so processed as to affect injuriously the nature,

(j) Rameshwar Chaudhury V. Purulia Municipality, A.I.R. 1933 Patna 193, =14 P.L.T. 146=143 I.C. 65.=1933 Cr. C. 586=34 Cr. L.J. 572.

(k) Deomitra V. Rex A.I.R. 1949 All. 35=148 A.W.R. H.C. 204=1948 P.L.J. 490=50 Cr. L.J. 105.

(l) Narijan Das V. Emperor. 1930 Rangoon 51=126 I.C. 535=31 Cr. L.J. 1065=19304 C. 24.

(m) Ganda Ram V. Emperor. A. I. R. 1942 Pesh. 47 (2)=200 I. C. 880=1942 Pesh L.J. 47=43 Cr. L.J. 728.

substance or the quality thereof, the article is to be deemed as adulterated.

14. A few cases of adulteration and non-adulteration relevant under this sub clause :—

case of adulteration :—

- (i) Adulteration with respect to ghee implies mixture of substance not derived from milk (n).
- (ii) Where the report of the Chemical Analyst was to the effect that Katha was adulterated and contains 25 percent of extraneous inorganic matter over and above the usual permissible limit, it was held that upon the report it could not be urged that 25 percent of extraneous matter might be some substance which unavoidably became inter mixed during the process of preparation, boiling or solidification and so the article was held adulterated (o).
- (iii) The accused was charged with having mixed 50 percent of Mahua flower, coffee husk and cereal with coffee prepared by him. On the label on the packets which were seized by the Health Officer appeared the words "coffee powder 50% Indian Chicory 50%." Held that the articles seized were adulterated (p).
- (iv) Honey sold with admixture of 38% of cane sugar as pure honey. Though cane sugar is innocuous, fraudulent intention of the seller is obvious. (q).
- (v) Commercial ghee or buffalo ghee containing foreign fat is adulterated ghee (r).
- (vi) The law has laid down that Chicory and no other substance shall be mixed with coffee and so the admixture of any other substance like powdered wild date seeds will be an offence under the law (s).

(n) Ramdayal Gupta V. Emperor. A.I.R. 1927 All. 730=99 I. C. 71=28 Cr. L.J. 39=7 A.I. Cr. R. 40=8 L.R.A. Cr. 8.

(o) Chitar Mal V. State. A.I.R. 1955 N.U.C. 169. (All):

(p) In re Ismail Abdulla. A.I.R. 1945 Mad. 68=1944 Cr. L.J. 466=57 M.L.W. 590=1944 M.W.N. 637=218 I.C. 302=44 Cr. L.J. 456.=1944-2 M.L.J. 236

(q) Public Prosecutor V. Sannidhi Sri ranganayakulu A.I.R. 1949 Mad 629=50 Cr. L.J. 893. =1949 M.W.N. 282=1949 2 M.L.J. 15.

(r) Grande Venkatta V. Corporation of Calcutta. 56 I.C. 586=24 C.W.N. 388=21 Cr. L.J. 490=I.L.R. 47 Cal. 644.

(s) Public Prosecutor. V. Sarathiyanger 1955 Mad. W.N. 486=(1955) 1 M.L.J. 309=68 M.L.W. 486.

15. Cases of no adulteration : (1) Tea mixed with small percentage of tea stalk powder held not adulterated, since the leaves and buds have their support on the stem or stalk of the tea plant, it is inevitable that at least a portion of such stem or stalk will remain attached to the leaves and buds collected for manufacturing tea. A portion of the tender stalk will be present within the bud itself and as such it will almost be an impossibility to have a complete exclusion of the stalk from manufactured tea (t).

(2) Stem or stalk is not alien to tea leaf or tea bud. These are not matters foreign to tea. Tea mixed with these matters is not adulterated tea, though it may be a poor quality tea. Consequently, storing, exposing and offering for sale tea which was found to contain a high percentage of stems or stalk is no offence (u).

16. Section 2 (1) (c) Explained : Under this sub-clause an article of food is deemed to be adulterated if any inferior or cheaper substance has been substituted wholly or in part for the original article so as to affect injuriously the nature, substance or quality thereof. Naturally if the article of food is wholly or partly replaced by any inferior or cheaper substance, its efficacy and usefulness as an article of food would be much reduced.

17. A few cases of adulteration under section 2 (1) (c) :
 (i) Where a sample of turmeric, sent to an Analyst is reported to contain ash, 31.45% and other inorganic and vegetable matter, the case falls both under clauses (b) and (c) of Sec 2 of the Central Act. The sample produced is mixed with a substance and it must operate to the disadvantage of the purchaser or consumer and would also diminish the nutritive or beneficial properties of turmeric in its pure and normal state. Besides its being mixed with Ash it must have a lower commercial value than turmeric in a pure and normal state (v).

(ii) The admixture of powdered wild date seeds with coffee constitutes adulteration under this sub-clause (w).

(iii) Where a person sells 'Jilebi' which is prepared in ghee adulterated with fat not derived from milk or cream and no notice is published in the manner prescribed by rule 28-B, ghee being an ingredient of sweet meat, the person must be held to

(t) State V. Anthony George. A.I.R. 1955 N.U.C. 1902 (Trav. Cochin).

(u) Mani Bhai Patel V. The State A.I.R. 1952 Cal 761=56 C.W.N. 554=1952 Cr. L.J. 1488.

(v) State V. Shanti Parkash A.I.R. 1957 Punjab 56=59 P.L.R. 17=57 Cr. L.J. 390.

(w) Public Prosecutor V. Parthasarathi Aiyanger, A.I.R. 1955 N.U.C. (Madras) 3188=1955 M.W.N. 486=(1955) 1 M.L.J. 309=68 M.L.W. 486.

have committed an offence (x).

Note. Cases cited under Sec, 2 (1) (b) are relevant also under this sub-clause.

18. Section 2 (1)(d)—Explained :—Under this clause an article of food is to be deemed adulterated if any constituent or ingredient of the said article of food has been, wholly or in part, abstracted and such abstraction does affect injuriously the nature, substance or quality thereof. (x),

19. Constituent :—The word constituent has not been defined in the Act, and so it has to be taken in dictionary sense (y)

The word constituent is equivalent to component part or ingredient of an article and the word ingredient has been defined in Chamber's Dictionary as that which enters into a compound, a component part of any thing. Another definition of the word ingredient is given in Oxford Dictionary as 'something that enters into the formation of a compound, component part, constituent, element.'

20. Some cases of adulteration under this sub-clause :—Where there is a diminution of nutritive or beneficial properties of food, or where there is a mixture of an article of food with a substance of lower commercial value, the article of food is adulterated (z).

21. Section 2 (i) (e) Explained :—Under this sub-clause an article of food is to be deemed adulterated if it has been prepared, packed or kept under insanitary conditions whereby it has become contaminated or injurious to health. This sub-clause requires two conditions to make an article adulterated :

- (i) The article in question must have been prepared, packed or kept under insanitary conditions and
- (ii) The said fact must have resulted in contaminating the said article or making it injurious to health.

The word insanitary means unhealthy and the word contaminated means polluted, defiled or corrupted.

22. Section 2 (i) (f) and (g) Explained : Under these sub-clauses an article of food is to be deemed adulterated in case the article consists wholly or in part of any filthy putrid, disgusting rotten, or decomposed diseased animal or vegetable substance or

(x) Public Prosecutor Madras V Parameshwara Aiyar A.I.R. 1947 Mad. 428=1947 2 M.L.J. 71=1947 M.W.N. 408-60 M.L.W. 434.

(y) Crown Prosecutor V. Ramanatha Aiyar. A.I.R. 1946 Mad. 44=1945-2 M.L.J. 366.=58 M.L.W. 517=1945 M.W.N. 636=223 I.C. 118-47 Cr. L.J. 351-I.L.R. (1946) M. 514

(z) State V. Shanti Parkash A.I.R. 1957 Punj. 56=59 P.L.R. 17=57 Cr. L.J. 390.

is insect infested, or is otherwise unfit for human consumption or if the article is obtained from a diseased animal.

23. Filthy :—Means dirty or impure.

24. Putrid :—Means noxious, decomposed or rotten. The words unwholesome and noxious, in relation to an article of food have been defined in Section 2 (xv) to mean respectively that the article is harmful to health or repugnant to human use.

25. Disgusting :—Disgust means dislike, repugnance or exciting aversion and disgusting means exciting disgust. The word noxious means harmful or injurious to health or unwholesome (a).

26. Section 2(1) (h)-Explained :—Under this sub-clause an article of food is to be deemed adulterated in case it contains any poisonous or any other ingredient rendering the article injurious to health.

27. Section 2(i) (i)-Explained :—Under this sub-clause an article of food is to be deemed adulterated if its container is composed, wholly or partly, of any poisonous or deleterious substance rendering its contents injurious to health.

28. Deleterious :—The word deleterious means hurtful, destructive or poisonous.

29. Requirements of container :—The requirements of container of an article of food are given in the rules framed by the Central Government under Sec. 23 of the Act, and the same are given in Part IX of the rules under the heading "conditions for sale and licence" in para No. 49 and the same are given below :—

49. Conditions for sale :—(1) Every utensil or container used for manufacturing, preparing or containing any food or ingredient of food intended for sale shall be kept at all times in good order and repair and in a clean and sanitary condition. No such utensil or container shall be used for any other purpose.

(2) No person shall use for manufacturing, preparing or storing any food or ingredient of food intended for sale, any utensil or container which is imperfectly enamelled or imperfectly tinned or which is made of such materials or is in such a state as to be likely to injure such food or render it noxious.

(3) Every utensil or container containing any food or ingredient of food intended for sale shall at all times be either provided with a tight fitting cover or kept closed or covered by a properly fitting lid or by a close fitting cover or gauze net or

other material of a texture sufficiently fine to protect the food completely from dust, dirt and flies and other insects.

(4). No utensil or container used for the manufacture or preparation of, or containing any food or ingredient of food intended for sale shall be kept in any place in which such utensil or container is likely by reason of impure air or dust or any offensive, noxious or deleterious gas or substance or any noxious or injurious emanations, exhalation or effluvium, to be contaminated and thereby render the food noxious.

(5) A utensil or container made of the following materials or metals, when used in the preparation of food shall be deemed to render it unfit for human consumption :

- (i) Containers which are rusty ;
- (ii) enamelled containers which have become chipped and rusty ;
- (iii) copper or brass containers which are not properly tinned; and
- (iv) containers made of aluminium containing an admixture of lead.

Provided that utensils or containers made of copper or brass which are not properly tinned may be used in the preparation of sugar or confectionary and mere use of such utensils or containers shall not be deemed to render sugar or confectionary unfit for human consumption.

Note:—The proviso has been added to sub-rule (5) by S.R.O. 2755 dated 20th of November, 1956.

30 Section 2 (i)(j)-Explained :- Under this sub-clause an article of food is to be deemed adulterated if any colouring matter other than the one prescribed thereof and in amounts not within the prescribed limits of variability is present in the article.

The word 'prescribed' has been defined in Sec. 2 (xii) of the Act as meaning prescribed by rules made under the Act. The relevant rules made by the Central Government under Sec. 23 of the Act as given in part-VI-under the heading 'colouring matter' are given below. These rules are rules No. 23 to 31.

→ **23. Unauthorised addition of colouring matter prohibited.** The addition of a colouring matter to any article of food except as specifically permitted by these rules, is prohibited.

24. Extraneous addition of colouring matter to e mentioned on the label—Where an extraneous colouring matter has been added to any article of food there shall be written on the label attached

to any package of food so coloured a statement in capital letters as below :

“ ARTIFICIALLY COLOURED ”

“Provided that this rule shall not apply to cheese (all classes) ice-cream, mixed ice-cream, icing sugar and geletine desserts.”

25. Use of caramel permitted—Notwithstanding provisions of rule 24 caramel may be used without label declaration.

26. Natural colouring matter which may be used—The following natural colouring principles, whether isolated from natural colours or produced synthetically may be used in or upon any article of food.

- (a) Cochineal or Carmine. (b) Carotin and Carotenoids.
(c) Chlorophyll (d) Lactoflavin. (e) Caramel. (f) Annatto.
(g) Ratanjot. (h) Saffron. (i) Curcumin. (*Haldi*).

27. Addition of inorganic matters and pigments prohibited—Inorganic colouring matters and pigments shall not be added to any article of food.

28. Coal Tar dyes which may be used—No coal tar dyes or a mixture there of except the following shall be used in foods :—

Colour	Common name	Colour index	Chemical class
1. Red	Ponceau 4 R	185	Azo
	Carmoisine	179	Azo
	Red 6B	57	Azo
	Red FB	225	Azo
	Acid Magenta II	692	Triphenylmethane
	Fast Red E	182	Azo
2. Yellow	Tartrazine	640	Pyrazolone
	Sunset Yellow FCF	.. ..	Azo
3. Blue	Blue VRS	672	Triphenylmethane
	Indigo Carmine	1180	Indigoid
4. Black	Brilliant Black BN	.....	Bisazo

*F. D. & C. No. 6.

29. Use of permitted coal tar dyes prohibited - Use of permitted coal tar dyes in or upon any food other than those enumerated below is prohibited :

- (a) Ice-cream including mixed ice-cream.
(b) Dairy products except milk, dahi, butter, ghee, chhana,

condensed milk, cream and baby foods.

- (c) Smoked fish.
- (d) Egg preparations.
- (e) Biscuit, pastry, confectionary and sweets.
- (f) Fruit products.
- (g) Non-alcoholic beverages except tea, cocoa and coffee.
- (h) Custard powder.
- (i) Jelly crystals.
- (j) Soup powder.
- (k) Luncheon or Pork Luncheon meat.

30 Maximum limit of permitted colours—The maximum limit of any permitted coal tar colours or mixture of permitted coal tar colours which may be added to any food shall not exceed 1.5 grains per pound of the final food or beverage for consumption,

31. Colours to be pure—The colours specified in rule 28 when used in the preparation of any article of food shall be pure and free from any harmful impurities.

Note :— Rules No. 26 and 28 to 30 have been substituted for the old ones by S. R. O. 2755 dated 20th of November, 1956.

31. Section 2 (1) (k) Explained—: Under this sub-clause an article of food is to be deemed adulterated if it contains any prohibited preservative or permitted preservative in excess of the prescribed limit. The Central Government under Sec. 23 of the Act has made rules concerning the use of preservatives and the same are given in part (x) of the rules under the heading "Preservatives." This Part (x) was added by Gazettee Notification No. S.R.O. 1687, dated 14th July 1956 and was published in the Government of India Gazette, Part II-Sec. 3 dated July 28th, 1956. The rules in Part (x) have come into force from the date of their publication in the Gazettee. The relevant rules 52 to 56 are given below :

52. Definition of Preservative—Preservative means a substance which when added to food, is capable of inhibiting, retarding or arresting the process of fermentation, acidification or other decomposition of food.

53. Classification of Preservative—Preservatives shall be divided into following classes :

- (i) Class I Preservative shall be
 - (a) Common Salt,
 - (b) Sugar

- (c) Dextrose,
- (d) Glucose,
- (e) Wood smoke,
- (f) Spices,
- (g) Vinegar or acetic acid,
- (h) Honey,
- (i) Honey,
- (j) Commercial salt petre, and
- (k) Alcohol or potable spirits.

Addition of Class I preservatives in any food in any proportion is not restricted.

(ii) Class II preservatives shall be

- (a) Benzoic acid including salts thereof, and
- (b) Sulphurous acid including salts thereof, and
- (c) Nitrites of sodium or potassium in respect of food like ham, pickled meat.

54. Use of more than one Class II Preservative prohibited—No person shall use in or upon a food more than one Class II Preservative.

55. Use of Class II Preservatives restricted—The use of Class II Preservatives shall be restricted to the following group of foods in concentration not exceeding the proportions given below against each :

Article of food	Preservative	Parts per million
1.	2	3
1. Sausages and sausage meat containing raw meat, cereals and condiments.	Sulphur dioxide	450
2. Fruit, fruit pulp or juice (not dried) for conversion into jam or crystallised glaze or cured, fruit or other products,		
(a) Cherries ...	do	3,000
(b) Straw berries, & Raspberries —	do	2,000
(c) Other fruits ...	do	1,000
3. Fruit juice concentrate —	do	1,500
4. Dried fruits -		
(a) Apricots, peaches, apples, pears and other fruits ...	do	2,000
(b) Raisins and sultanas —	do	750

Article of food	Preservated	Parts per million
1	2	3
5. Other non-alcoholic wines, cordials, fruit juices and beverages sweetened and unsweetened ...	Sulphur dioxide or Benzoic acid	350 600
6. Jam, Marmalade, preserve, canned cherry and fruit jelly ...	Sulphur dioxide or Benzoic acid	400 200
7. Crystallised glaze or cured fruit (including candied peel)	Sulphur dioxide	150
8. Fruit and fruit pulp not otherwise specified in this schedule —	do	350
9. Sugar, glucose, Gur and Khandsari.	do	70
10. Corn flour and such like starches.	do	100
11. Corn syrup —	do	450
12. Gelatine ...	do	350
13. Beer ...	do	70
14. Cider ...	do	200
15. Alcoholic wines ...	do	450
16. Sweetened mineral water ...	Sulphur dioxide or Benzoic acid	70 120
17. Brewed ginger beer —	Benzoic acid	120
18. Coffee extract ...	Benzoic acid	450
19. Pickles and chutney made from fruit or vegetables —	do	250
20. Tomato and other sauces ...	do	750
21. Cooked pickled meat including ham and bacon —	Sodium or potassium nitrate	Not more than 200 p.p.m. (calculated) as sodium nitrate)
22. Danish tinned Caviar ...	Benzoic acid	50
23. Dehydrated vegetables —	Sulphur dioxide	2,000
24. Tomato puree and paste ...	Benzoic acid	250
25. Syrups and sherbats —	Sulphur dioxide or Benzoic acid	600
26. Dried ginger ...	Sulphur dioxide	2,000

56. Container of food which contains preservative not to be marked "Pure"—The word "Pure" shall not be used on the label of the container of any food which contains preservative.

32. Section 2 (i) (l) Explained :—Under this sub-clause an article of food is to be deemed adulterated in case the quality or purity of the article in question falls below the standard prescribed or in case its constituents are present in the article in question in quantities in excess of the prescribed limits of variability

The Central Government has under Section 23 of the Act made rules and as required by rule No. 5 in Part III under the heading "Definitions and Standards of quality" specified in appendix B to the rules, standards of quality of various articles of food.

Please see appendix B in this connection and rule No. 5 of Part III of the rules.

33. Provincial rules regarding articles of food for which no standard is fixed under the rules framed by the Central Government :—Under Sec. 25 of the Act all the Provincial Acts relating to Food Adulteration which were in force in the various States immediately before the commencement of this Act stand repealed by the coming into force of the Central Act and not the rules. Clause (2) of Sec 25, expressly provides for these rules which runs as follows : "Notwithstanding the repeal by this Act of of any corresponding law all rules, regulations and bye-laws relating to the prevention of adulteration of food, made under such corresponding law and in force immediately before the commencement of this Act shall, except where and so far as they are inconsistent with or repugnant to the provisions of this Act, continue in force until altered, amended or repealed by rules under this Act". So apparently where no standards of quality or purity for any article of food is prescribed by the rules made by the Central Government under Sec. 23 of the Act, the relevant rules prescribed by the respective Provincial Governments concerning those articles shall apply, until those Provincial rules are altered, amended or repealed by rules made under this Act. For further commentary see Sec. 25.

34. Section 2 (ii) "Central Food Laboratory"—"Central Food Laboratory" means any Laboratory or institute established or specified under Sec. 4 of the Central Act. Under Sec. 4 of the Act, the Central Government may by Notification in the Official Gazette,—

(a) establish a Central Food Laboratory ; or

(b) specify any Laboratory or institute as a Central Food Laboratory,

to carry out the functions entrusted to the Central Food Laboratory by this Act or any rules made under this Act.

35. Central Food Laboratory - its establishment etc.—

The Central Food Laboratory has been constituted by Notification No. S R.O. 1234 PFA/Section 4 F-11-4/55 D (1), dated June 1st, 1955, and is located at 110, Chittaranjan Avenue, Calcutta-12. The fees payable for analysis by a Central Food Laboratory is Rs. 40/- per sample of food from November 24, 1956, according to the notification in the Government of India Gazette, dated 24th November, 1956, Part II Sec. 3. The said fees is to be deposited in the Government Treasury under Head "XXVIII Public Health (Central) Collection of Payment for Services Rendered."

The Provisions for the establishment of Central Food Laboratory, its functions and the provisions allowing the accused to get the sample in his possession examined (Section 13) by the same are a very healthy and wholesome check in the interests of justice on the arbitrary use of the powers by the Public Analyst.

36. The Functions of the Central Food Laboratory.—

According to Sec. 4 (2) of the Central Act, the Central Government may, after consultation with the Committee make rules prescribing—

- (a) the functions of the Central Food Laboratory ;
- (b) the procedure for the submission to the said Laboratory of samples of articles of food for analysis or tests, the forms of the Laboratory's reports thereon and the fees payable in respect of such reports;
- (c) such other matters as may be necessary or expedient to enable the said Laboratory to carry out its functions.

Sec. 13 clauses (2) (3) (4) (5) of the Central Act run as follows:—Which lay down the procedure enabling the accused vendor or the complainant to have the certificate of analysis of the Director of Central Food Laboratory.

(2) After the institution of a prosecution under this Act the accused vendor or the complainant may, on payment of the prescribed fee, make an application to the Court for sending the part of the sample mentioned in sub clause (i) or sub clause (ii) of clause (c) of sub-section (I) of Section II to the Director of the Central Food Laboratory for a certificate; and on receipt of the application the Court shall first ascertain that the mark and seal or fastening as provided in clause (b) of sub-section (I) of section II are intact and may then despatch the part of the sample under its own seal to the Director of the Central Food Laboratory who

shall thereupon send a certificate to the Court in the prescribed form within one month from the date of receipt of the sample, specifying the result of his analysis.

(3) The certificate issued by the Director of the Central Food Laboratory under sub-section (2) shall supersede the report given by the Public Analyst under sub-section (1).

(4) Where a certificate obtained from the Director of the Central Food Laboratory under sub-section (2) is produced in any proceeding under this Act, or under Sections 272 to 276 of the Indian Penal Code (Act XLV of 1860), it shall not be necessary in such proceeding to produce any part of the sample of food taken for analysis.

(5) Any document purporting to be a report signed by a Public Analyst, unless it has been superseded under sub-section (3), or any document purporting to be a certificate signed by the Director of the Central Food Laboratory, may be used as evidence of the facts stated therein in any proceeding under this Act or under sections 272 to 276 of the Indian Penal Code (Act XLV of 1860).

Provided that any document purporting to be a certificate signed by the Director of the Central Food Laboratory shall be final and conclusive evidence of the facts stated therein.

The Central Government under Section 23 of the Act has framed the following rules under Part II of the rules.

PART II THE CENTRAL FOOD LABORATORY

3. Functions:—In addition to the functions entrusted to the Laboratory by the Act, the Laboratory shall carry out the following functions, namely—

- (a) analysis of samples of food sent by any officer or authority authorised by the Central Government for the purpose and submission of the certificate of analysis to the authorities concerned ;
- (b) investigations for the purpose of fixation of standards of any article of food ;
- (c) investigations in collaboration with the laboratories of Public Analysts in the various States for the purpose of standardizing methods of analysis.

37. Section 2. (iii) 'Committee' : 'Committee' means the Central Committee for Food Standards constituted under Sec. 3 of the Central Act.

Section 3 of the Central Act runs as follows :

S. 3. The Central Committee for Food Standards : (1) The

Central Government shall, as soon as may be after the commencement of this Act, constitute a Committee called the Central Committee for Food Standards to advise the Central Government and the State Governments on matters arising out of the administration of this Act and to carry out the other functions assigned to it under this Act.

(2) The Committee shall consist of the following members, namely :—

- (a) the Director General, Health Services, ex-officio, who shall be the Chairman ;
- (b) the Director of the Central Food Laboratory, ex-officio ;
- (c) two experts nominated by the Central Government ;
- (d) one representative each of the Central Ministries of Food and Agriculture, Commerce and Industry, Railways and Defence nominated by the Central Government ;
- (e) one representative each nominated by the Government of each Part A State and Part B State ;
- (f) two representatives nominated by the Central Government to represent the Part C States ;
- (g) two representatives of industry and commerce nominated by the Central Government.
- (h) one representative of the Medical profession nominated by the Indian Council of Medical Research.

(3) The members of the Committee referred to in clauses (c), (d), (e), (f), (g) and (h) of sub-section (2) shall unless their seats become vacant earlier by resignation, death or otherwise, be entitled to hold office for three years and shall be eligible for renomination.

(4) The functions of the Committee may be exercised notwithstanding any vacancy therein.

(5) The Committee may appoint such and so many sub-committees as it deems fit and may appoint to them persons who are not members of the Committee to exercise such powers and perform such duties as may subject to such conditions, if any, as the Committee may impose, be delegated to them by the Committee.

(6) The Committee may, subject to the previous approval of the Central Government make bye-laws for the purpose of regulating its own procedure and the transaction of its business.

38. Section 2 (iv) 'Director of the Central Food Labo-

ratory' :—The Director of Central Food Laboratory means the person appointed by the Central Government by notification in the Official Gazette as the director of the Central Food Laboratory and includes any person appointed by the Central Government in like manner to perform all or any of the functions of the Director under this Act

39. Section 2 (v) 'Food' : 'Food' means any article used as food or drink for human consumption other than drugs and water and includes ;

(a) any article which ordinarily enters into, or is used in the composition or preparation of human food, and

(b) any flavouring matter or condiments ;

40. Sub-clause explained :—The word 'Food' according to this sub-clause

(1) excludes all drugs and water.

(2) includes.

(a) every other article of food and drink meant for human consumption ;

(b) every other article which ordinarily enters into and is used in the composition or preparation of human food ;

(c) any flavouring matter or condiments.

41. Drugs :—The word 'Drug' has been defined in Sec. 3 (b) of the Drugs Act, (XXIII of 1940) as follows :

(b) "drug" includes all medicines for internal or external use of human beings or animals, and all substances intended to be used for or in the treatment, mitigation or prevention of disease in human beings or animals, other than medicines and substances exclusively used or prepared for use in accordance with the Ayurvedic or Unani systems of medicine.

42. Definition of Food as given in some Provincial Acts : The definition of the word 'Food' in the Central Act is much wider than given in some of the previous Provincial Acts. The definition of the word 'Food' as given in Section 3 (c) of the Punjab Pure Food Act, 1929 is almost the same as given in the Central Act. Sec. 3 (c) of the Punjab Pure Food Act runs as follows ;

Sec. 3 (c) 'Food' includes every article used for food or drink by man other than a drug and any article which enters

into the composition or is used in the preparation of any such article and also includes flavouring and colouring matters and condiments.

The word 'Food' has been defined under Sec. 2 (g) of the U. P. Pure Food Act as follows :

"Food" means any article of food or drink other than a drug, water, wine, liquors or other excisable articles (intoxicants) used for human consumption including

- (i) any substance which is ordinarily mixed in the preparation of food ;
- (ii) any flavouring matter or condiment ;
- (iii) any colouring matter used or intended to be used in food ;

Provided that notwithstanding anything contained in this definition, the addition of any colouring or flavouring matter or condiment to any article used as food or drink shall be deemed to be the addition of a substance to food."

The definition given in the U. P. Act excludes liquors, wines and other intoxicants, whereas under the present Central Act liquors, wines and other similar excisable articles are included in the word food as the same are included in the list of the various articles of food mentioned in Col. 1 of Rule 55 of Central Rules.

43. Articles judicially held to be articles of food :

- (i) Fruits (a)
- (ii) Mustard oil (b) ;
- (iii) Linseed oilseeds are edible oil seeds. The word edible according to Webster's Dictionary means fit to be eaten as food, eatable. According to Chamber's 20th Century Dictionary edible means fit to be eaten. Similarly according to Oxford Dictionary it means fit to be eaten (c) ;
- (iv) Not only mustard oil, but mustard seeds also is food. Mustard seeds are used in cooking etc , and are also used with

(a). *Bombay Municipality V. Yenkanna*=A.I. R. 1928 Bomb. 413=52 Bombay. 780=30 B. L. R. 1128.

(b). *Purneshwar V. Purulia Municipality*--A.I.R. 1933 Patna 103-143 I.C. 65-14 P.L.T. 146-34 Cr. L.J. 572=1933 Cr. C. 585, *Kamalan Sarda V. Emperor* A I R- 1935 Patna 521=158 I.C. 728=16 P.L.T. 655-36 Cr. L.J. 1419=1935 Cr. C. 1279.

(c) *Kamla Kant V. State*--A.I.R. 1951 All. 595=1951 A.W.R. (H.C) 98 =1951 A.L.J. Cr. R. 18=1951 A.L.J. 348=52 Cr. L. J. 879.

spices for flavour (d) ;

(v) Mustard and linseed oils are articles of food (e) ;

(vi) The definition of food is wide enough to include Katha as an article of food. (f)

44. Section 2 (vii)-'Local Area.' : 'Local area' means any, area; whether urban or rural, declared by the State Government by notification in the Official Gazette, to be a local area for the purposes of this Act

45 Fixation of Local Area and its necessity : Declaration of a local area is necessary before there can be any local authority u/s 2 (viii) and before any Public Analyst or Food Inspector can be appointed under Sec. 8 & 9 respectively and before any Medical Practitioner can be required to report food poisoning cases under section 15.

Under Section 8 the State Government has to appoint persons by notification in the official Gazette in such number as it thinks fit and possessing such qualifications as may be prescribed, to be public analyst and define the local areas over which they shall exercise jurisdiction. Even the State Government under Sec. 8 is empowered to appoint one public analyst for two or more local areas, such local areas being regarded as one unit for the purposes of this Act. Under Sec. 9 the State Government is authorised to appoint by notification in the official gazette persons in such number as it thinks fit, having the prescribed qualifications to be Food Inspectors for the purposes of this Act, and they shall exercise their powers within such local areas as the Government may assign to them. Under Sec. 15 the State Government is authorized to require by notification in the Official Gazette medical practitioners carrying on their profession in any local area specified in the notification to report all occurrences of food poisoning coming within their cognizance to such officer as may be specified in the notification.

46. Punjab Government Notification : Published in the Punjab Gazette, Part I, dated September 2, 1955.

HEALTH DEPARTMENT. The 20th August 1955: No. 11347 (S) 9958 (Ch). 3 HB-55/21377 : In pursuance of the provisions of Section 2(vii) of the Prevention of Food Adulteration Act, 1954 (No. 37 of 1954), the Governor of Punjab is pleased to declare the following areas as "Local Areas" for the purpose of the said Act :—

(d) Laxmi Narayan V. State—A.I.R. 1953 All. 713—1953 C.L.J. 1628.

(e) State V. Balmokand—A.I.R. 1954 All. 97.

(f) Chitar Mal V. State—A.I.R. 1955 N.U.C 169 (Allahabad).

(1) Chandigarh Project Area.

(2) Bhakra-Nangal Project Area.

No. 7603--6587-CH-3HB-55/37326. In pursuance of the provisions of Section 2(VII) of the Prevention of Food Adulteration Act, 1954, (No. 37 of 1954) the Governor of Punjab is pleased to declare the following areas as "Local Areas" for the purposes of the said Act :—

- (1) Areas subject to the authority of the district boards established in the State of Punjab ;
- (2) Areas subject to control of the cantonment authorities ;
- (3) Areas comprised within municipalities of the State of Punjab and
- (4) Notified Areas in the State of Punjab.

47. U P. Government Notification: By Notification No 10656 (i) XVI (P H.)-722. 55, published in the U.P. Government Gazette, Part I at page 245, dated February 18, 1956, the Governor has declared the following to be 'Local Areas' for the purposes of this Act :

(i) Municipalities, (ii) Railway premises including railway stations and colonies, (iii) Cantonments, (iv) Notified Areas and (v) Rural areas, which shall include Town Areas in Uttar Pradesh.

48. Bihar Notification :—All Municipalities, Cantonment Areas, and Notified Areas, the areas within the jurisdiction of all District Boards, Jharia Mines Board of Health, Dhanbad and Hazaribag Mines Board Hazaribag are declared to be local areas under this sub-clause by notification in Behar Gazette Part II page 3370, published on 2-11-55.

49 Andhra Notification :—Prevention of Food Adulteration Act 1954 (37 of 1954) Declaration under Sub-section (vii) of section 2, every area within the jurisdiction of a Local Authority declared to be a local area.

Andhra Gazette dated 21-2-1955. Part I page 566.

50. West Bengal Notification.—Prevention of Food Adulteration Act 1954 (Act 37 of 1954) Declaration under sub-section (VII) of section 2.

Declared that the areas mentioned below be the local area for the purpose of the said Act. They are :—(1) the area included within the local limits of jurisdiction of every district board established under Bengal Act 3 of 1885. (2) the area comprised in every municipality constituted under Bengal Act 15 of 1932; (3) the area described in Schedule I to Bengal Act 33 of 1951 as

amended by that Act; (4) the area comprised in Cooch Behar Municipality constituted under Cooch Behar Act 3 of 1944 ; (5) the area comprised in Assansol and Raniganj Municipalities; (6) the district of Cooch Behar excluding Municipality constituted under Act 3 of 1944 and (7) every area comprised in the place or places declared to be a cantonment under the Cantonment Act 2 of 1941.

Calcutta Gazette dated 30-6-55 Part I Page 2560.

51. Bombay Notification.—No. P.F A.-1055 /D-1 .In exercise of the powers conferred by clause (vii) of section 2 of the Prevention of Food Adulteration Act, 1954 (XXXVII of 1954), the Government of Bombay hereby declares each of the areas specified in the Schedule appended hereto, to be a local area for the purposes of the said Act.

SCHEDULE.

LOCAL AREA.

Area within the limits of—

- (a) the Municipal Corporation of Greater Bombay.
- (b) the Municipal Corporation of the City of Poona.
- (c) the Municipal Corporation of the City of Ahmedabad.
- (d) the cantonments of Poona and Ahmedabad.
- (e) each of the following municipalities, namely :

Dhulia Municipal Area.	Distt. West Khandesh.
Sholapur Municipal Area.	Distt. Sholapur.
Ahmednagar Municipal Area.	Distt. Ahmednagar.
Amalner Municipal Area.	Distt. East Khandesh.
Hubli Municipal Area.	Distt. Dharwar.
Thana Municipal Area.	Distt. Thana.
Pandharpur Municipal Area.	Distt. Sholapur.
Nasik Municipal Area.	Distt. Nasik.
Belgaum Municipal Area.	Distt. Belgaum.
Trimbak Municipal Area.	Distt. Nasik.
Barsei Municipal Area.	Distt. Sholapur.
Bhusawal Municipal Area.	Distt. East Khandesh.
Dharwar Municipal Area.	Distt. Dharwar.
Malegaon Municipal Area.	Distt. Nasik.
Igatpuri Municipal Area.	Distt. Nasik.
Chopda Municipal Area.	Distt. East Khandesh.

Satara Municipal Area.	Distt. Satara.
Chalisgaon Municipal Area.	Distt. East Khandesh.
Mahableshwar Municipal Area.	Distt. North Satara.
Gadag-Betgeri Municipal Area.	Distt. Dharwar.
Manmad Municipal Area.	Distt. Nasik.
Bagalkot Municipal Area.	Distt. Bijapur.
Jalgaon Municipal Area.	Distt. East Khandesh.
Nandurbar Municipal Area.	Distt. West Khandesh.
Panchgani Municipal Area.	Distt. North Satara.
Miraj Municipal Area.	Distt. South Satara.
Bijapur Municipal Area.	Distt. Bijapur.
Karad Municipal Area.	Distt. North Satara.
Erandol Municipal Area.	Distt. East Khandesh.
Sangli Municipal Area.	Distt. South Satara.
Raver Municipal Area.	Distt. East Khandesh.
Kalyan Municipal Area.	Distt. Thana.
Ilkal Municipal Area.	Distt. Bijapur.
Guledgud Municipal Area.	Distt. Bijapur.
Kolhepur Municipal Area.	Distt. Kolhapur.
Faizpur Municipal Area.	Distt. East Khandesh.
Shirpur Municipal Area.	Distt. West Khandesh.
Shrirampur Municipal Area.	Distt. Ahmednagar.
Yeole Municipal Area.	Distt. Nasik.
Shahada Municipal Area.	Distt. West Khandesh.
Sawantwadi Municipal Area.	Distt. Ratnagiri.
Dharangaon Municipal Area.	Distt. East Khandesh.
Ratnagiri Municipal Area.	Distt. Ratnagiri.
Vengurla Municipal Area.	Distt. Ratnagiri.
Wai Municipal Area.	Distt. North Satara.
Savda Municipal Area.	Distt. East Khandesh.
Malvan Municipal Area.	Distt. Ratnagiri.
Junnar Municipal Area.	Distt. Poona.
Pachora Municipal Area.	Distt. East Khandesh.
Savnur Municipal Area.	Distt. Dharwar.
Ichalkaranji Municipal Area.	Distt. Kolhapur.
Rabkavi Banhatti Municipal Area.	Distt. Bijapur.

Sinnar Municipal Area.	Distt. Nasik.
Broach Municipal Area.	Distt. Broach.
Kapadwani Municipal Area.	Distt. Kaira.
Nadiad Municipal Area.	Distt. Kaira.
Ankleshwar Municipal Area.	Distt. Broach.
Godhra Municipal Area.	Distt. Panchmahals.
Bulsar Municipal Area.	Distt. Surat.
Umreth Municipal Area.	Distt. Kaira.
Viramgam Municipal Area.	Distt. Ahmedabad.
Anand Municipal Area.	Distt. Kaira.
Randar Municipal Area.	Distt. Surat.
Dakor Municipal Area.	Distt. Kaira.
Amreli Municipal Area.	Distt. Amreli.
Dabhoi Municipal Area.	Distt. Baroda.
Kadi Municipal Area.	Distt. Mahsana.
Karjan Municipal Area.	Distt. Baroda.
Padra Municipal Area.	Distt. Baroda.
Mehsana Municipal Area.	Distt. Mehsana.
Radhanpur Municipal Area.	Distt. Mehsana.
Sidhpur Municipal Area.	Distt. Mehsana.
Vyara Municipal Area.	Distt. Surat.
Billimora Municipal Area.	Distt. Surat.
Abu Road Municipal Area.	Distt. Banaskantha.
Dohad Municipal Area.	Distt. Panchmahals.
Jambusar Municipal Area.	Distt. Broach.
Petlad Municipal Area.	Distt. Kaira.
Dhinoj Municipal Area.	Distt. Mehsana.
Rajpipla Municipal Area.	Distt. Broach.
Dhari Municipal Area.	Distt. Amreli.
Deesa Municipal Area.	Distt. Banaskantha.
Abu Municipal Area.	Distt. Banaskantha.
Unzha Municipal Area.	Distt. Mehsana.
Visnagar Municipal Area.	Distt. Mehsana.
Balasinor Municipal Area.	Distt. Kaira.
Borsad Municipal Area.	Distt. Kaira.
Palanpur Municipal Area.	Distt. Banaskantha.

Modasa Municipal Area. Distt. Sabarkantha.

Chhote Udepur Municipal Area. Distt. Baroda.

Surat Municipal Area.

Baroda Municipal Area.

52. **Section 2 (viii) 'Local Authority'** : "Local Authority" means in the case of—

(1) a local area which is—

(a) a municipality, the municipal board or municipal corporation ;

(b) a cantonment, the cantonment authority ;

(c) a notified area, the notified area committee ;

(2) any other local area, such authority as may be prescribed by the State Government under this Act.

53. **Sub-clause (viii) Explained** : In the case of a Municipality or a Cantonment or a Notified Area no individual is Local Authority under the Act. Neither the Chairman nor the Executive Officer or any other official or a member of any municipality, cantonment, or notified area is the local authority within the meaning of this sub-clause. Only the municipal board or municipal corporation in the case of municipality or the cantonment authority in the case of a cantonment or the notified area committee in the case of a notified area is the local authority under this sub-clause. In the case of any other local area other than a municipality, a cantonment or a notified area ; the only local authority can be one that may be prescribed by the State Government under this Act. Under section 20 "No prosecution for an offence under the Act can be instituted except by, or with the written consent of, the State Government or a local Authority or a person authorised in this behalf by the State Government or Local Authority ; Provided that a prosecution for an offence under this Act may be instituted by a purchaser referred to in Sec 12, if he produces in court a copy of the report of the public analyst along with the complaint". In the case of a local authority prosecution can be instituted only by the local authority or by any other person with the written consent of the local authority. This written authority may be general or special for a particular case. The following few judgments will support the said legal position.

(i) Offence committed within notified area—authority to sanction prosecution is notified area committee and not the D. M. (g)

(g) Shoran Singh V. Emperor--1948 A.W.R. H.C. 146=49 Cr. L.J. 681=A.I.R. 1948 All. 402.

(ii) The Chairman of a municipality has no power to sanction prosecution as sanction of the local authority is required and the Chairman is not the local authority. (Case under Sec. 6. Bengal Food Adulteration Act, 1919) (h)

(iii) The Chairman cannot be held to be the local authority and so where the prosecution report which is the complaint bears the signature only of the Chairman and the Sanitary Inspector and there is no evidence that either of them was authorised by the municipal commissioner to file a complaint in connection with an offence under the Food Adulteration Act, the complaint cannot be treated as a valid complaint (i)

(iv) The authority to file complaint should be granted by the municipal commissioners, and not by the Chairman of the municipality. The powers conferred on the Chairman by S. 24 of the Bihar Municipal Act cannot entitle him to act in place of the commissioners for the purposes of S. 21. The notification issued by the Chairman being thus defective on the face of it, it cannot be deemed to have conferred any authority on the sanitary inspector to file a valid complaint under S. 21 b). The authority may be general and need not be separate for each complaint (j)

(v) A Special Officer under the Municipal Act is not the local authority within the meaning of Sec. 21 (b) of the Bihar Prevention of Food Adulteration Act. Consequently a Sanitary Inspector cannot be held to have had the power under Sec. 21 (b) to file the complaint, simply because he was authorised by the Special Officer to file it. (k).

For full discussion of the subject see commentary under Sec. 20.

54. State Government Notifications under Sec. 2 (viii) of some of the States are given below :—

55. Punjab :— Published in the Punjab Gazette, Part I, dated July 8, 1955. **HEALTH DEPARTMENT**

The 29th June 1955.

No. 7603-S/6587-Ch-3HB-55/37728.-In exercise of the powers conferred by section 2 (viii) (2) of the Prevention of Food Adulteration Act, 1954 (No. 37 of 1954), the Governor of the Punjab is pleased to declare every district board constituted and established under the Punjab District Boards Act, 1883, to be the "Local

(h) Ragu nath Modi V. The Kurseong Municipality. A.I.R. 1923 Cal. 561 = 25 Cr. L.J. 170 = 76 I.C. 394.

(i) Ramjee Prasad V. The State--1955 N.U.C. 451 (A) Patna.

(j) State of Bihar V. Nanhak Sao.-A.I.R. 1955 N.U.C. 454 (Patna).

(k) Pursotam Das V. The State--A.I.R. 1955 N.U.C. 455 (Patna).

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Authority” for the purpose of the said Act, in respect of the area under its jurisdiction.

Published in the Punjab Gazette, Part I, dated September 2, 1955.

HEALTH DEPARTMENT. The 20th August 1955.

No. 11347(s)/9958(Ch)-3HB-55/21380. —In exercise of the powers conferred by section 2 (viii) (2) of the Prevention of Food Adulteration Act, 1954 (No. 37 of 1954), the Governor of Punjab is pleased to declare the Administrators, Chandigarh and Nangal Project Areas, to be the “Local Authority” for the purposes of the said Act, in respect of areas under their jurisdiction.

56. U. P. Notification :— Notification No. 10656 (ii) XVI-(P. H.) 722-755 published in U. P. Gazette dated Feb. 18, 1956, page 245, the Governor, in exercise of the powers conferred by Cl. (viii) (2) of section 2 of the Prevention of Food Adulteration Act, 1954, (Act No. XXXVI of 1954), is pleased to declare the “Local Authorities” for the various local areas other than Municipalities, Cantonments and Notified Areas as under;

- | | |
|---|--|
| 1. For the Rural Areas including town areas : | Magistrate Incharge, sub-divisions, concerned. |
| 2. For the Railway premises including Railway Stations and colonies : | Divisional Medical Officers of the Railway concerned in Uttar Pradesh. |

57. Madras Notification :— Rule under Prevention of Food Adulteration Act.

(C. O. Ms. No. 166, Health, 18th January 1956)

In exercise of the powers conferred by section 2 (viii) (2) of the Prevention of Food Adulteration Act 1954 (Central Act XXXVI of 1954), the Governor of Madras hereby makes the following rule The rule hereby made shall be deemed to have come into force on the 1st June 1955).

RULE

“Local Authority” means—

(1) in any area in a District, as defined in the Madras District Boards Act 1920 (Madras Act XIV of 1920) which is comprised within the jurisdiction of a Panchayat constituted under the Madras Village Panchayats Act 1950 (Madras Act X of 1950) the Panchayat concerned or if the Panchayat is dissolved or superseded, the Authority exercising the powers and discharging the duties of the Panchayat under sub-section (5) of section 48 of the said Madras Village Panchayats Act, 1950;

(2) in any area of a District which is comprised within the jurisdiction of any township Committee constituted by the State Government, the township committee concerned;

(3) in the case of all other areas in a District which are not comprised within the jurisdiction of such Fanchayats or Township Committees, the District Boards concerned or if the District Board is dissolved the authority appointed by the State Government to exercise the functions of the District Board.

(Published in the Rules Supplement to Part 1-A, Page 24 of the Fort St George Gazette dated 1st February 1956.)

58. Section 2 (IX)-“Misbranded”. : An article of food shall be deemed to be Misbranded—

- (a) if it is an imitation of, or is a substitute for, or resembles in a manner likely to deceive, another article of food under the name of which it is sold, and is not plainly and conspicuously labelled so as to indicate its true character ;
- (b) if it is falsely stated to be the product of any place or country ;
- (c) if it is sold by a name which belongs to another article of food ;
- (d) if it is so coloured, flavoured or coated, powdered or polished that the fact that the article is damaged is concealed or if the article is made to appear better or of greater value than it really is ;
- (e) if false claims are made for it upon the label or otherwise;
- (f) if, when sold in packages which have been sealed or prepared by or at the instance of the manufacturer or producer and which bear his name and address, the contents of each package are not conspicuously and correctly stated on the outside thereof within the limits of variability prescribed under this Act ;
- (g) if the package containing it, or the label on the package bears any statement, design or device regarding ingredients or the substances contained therein, which is false or misleading in any material particular ; or if the package is otherwise deceptive with respect to its contents ;
- (h) if the package containing it or the label on the packages bears the name of a fictitious individual or Company as the manufacturer or producer of the article ;
- (i) if it purports to be, or is represented as being, for special dietary uses, unless its label bears such information as may be prescribed concerning its vitamin, mineral, or other dietary properties in order sufficiently to inform its

purchaser as to its value for such uses ;

- (j) if it contains any artificial flavouring, artificial colouring or chemical preservative, without a declaratory label stating that fact, or in contravention of the requirements of this Act or rules made thereunder ;
- (k) if it is not labelled in accordance with the requirements of this Act or rules made thereunder.

59. Its import, manufacture for Sale etc. prohibited.:

Under Section 5 no person can import into India any misbranded food and under Section 7 no person can himself or by any other person on his behalf can manufacture for sale, or store, sell or distribute any misbranded food. The contravention of any of the said provisions is punishable under Sec. 16 of the Act and contravention of Section 5 makes the person punishable under the Sea customs Act 1878 as well (see section 6) ;

60. Misbranded explained and analysed : An article of food shall be deemed to be misbranded :—

(a) if it is sold under the name of another article of food :—

i. of which it is an imitation or

ii. of which it is a substitute or

iii. which it resembles in a manner likely to deceive.

And is not plainly and conspicuously labelled so as to indicate its true character.

(b) if it is falsely stated to be the product of any place or country of which it is not.

(c) if it is sold by a name which as a fact is not the name of article sold but which name, as a fact, belongs to another article of food.

(d) if it is

i. so coloured, flavoured or coated,

ii. powdered or polished.

As to conceal the fact that the article is damaged or to make it appear better or of a greater value than it really is,

(e) if false claims are made for the said article of food either upon the label or otherwise ;

(f) if the article of food is sold in packages sealed or prepared by or at the instance of the manufacturer or producer bearing his name and address and the contents of each package are not conspicuously or correctly stated on the outside thereof within the limits of variability prescribed under the Act.

- (g) if the packet containing the article of food or the label on the packet bears any statement, design or device regarding the ingredients or the substances contained therein.
 - (i) which is false or misleading in any material, particular or
 - (ii) if the package is otherwise deceptive with respect to its contents,
- (h) if the package containing the article of food or the label on the package bears the name of the fictitious individual or company as its manufacturer or producer ;
 - (i) if the article of food in question purports to be or is represented as being for special dietary uses and its label does not bear the prescribed information concerning its vitamins or minerals or other dietary properties to inform its purchaser sufficiently as to its value for such uses,
- (j) if the article of food contains
 - (i) any artificial flavouring or artificial colouring or chemical preservative and
 - (ii) there is no declaratory label stating that fact or it is in contravention of the requirements of this Act, or the rules made there under.
- (k) if the article of food is not labelled in accordance with the requirements of the Act or rules made there under.

Note. The rules concerning colouring matter are given in Part VI of the rules and have also been given under Section 2 (i) (j) and those regarding preservative are given under section 2 (i) (k) of the Act.

61. The rules regarding labelling and packing as given in Part (VII) of the rules : Part VII - Packing and labelling of foods.

32. Contents of the label—Unless otherwise provided in these Rules there shall be specified on every label :—

(a) the name, trade name, or description of food contained in the package ;

(^b) the name and business address of the manufacturer or importer, or vendor, or packer ;

(c) where any permitted class II preservative and/or colouring agent is added, a statement to the effect that it contains permitted class II preservatives and / or permitted colouring agents ;

(d) the net weight or number or measure or volume of contents as the circumstances may require except in the case of biscuits, confectionary and sweets where the weight may be expressed in terms of either average net weight and / or minimum net weight ;

(e) a batch number or code number either in Hindi or English numerals or alphabets or in combination.

Provided that in the case of food package weighing not more than 2 ounces, particulars including the statement under any clause need not be specified ;

Provided further that in the case of :—

(a) aerated water containers ; and

(b) a package containing more than 2 ounces but not more than 4 ounces of biscuits, confectionary and sweets particulars under clauses (d) and (e) need not be specified.

*Explanation :—*The term 'label' means a display of written, printed, perforated, stencilled, embossed or stamped matter upon the container of any food package.

33. Languages, of the particulars or declaration of the label. The particulars or declaration required under these rules to be specified on the label shall be in English or Hindi in Devnagri script :

Provided that nothing herein contained shall prevent the use of any other language in addition to the language required under this rule.

*Statutory Changes :—*Rules 32 and 33 have been substituted for the old ones by S. R. O. 2755, dated November 20, 1956.

34 Declaration to be surrounded by line—There shall be a surrounding line enclosing the declaration and where the words "unfit for babies" are required to be used there shall be another such line enclosing these words.

35. Distance of surrounding line—The distance between any part of the words "unfit for babies" and the surrounding line enclosing these words shall not be less than one sixteenth of an inch.

36. Size of the types used for declaration—The types used for the declaration shall not in any part, be less than one-eighth of an inch in height.

Provided that where the size of the package does not permit use of a type of one-eighth of an inch, letters of proportionately reduced size may be used :

Provided further that the type used for the words "unfit for babies" shall not be less than twice the height of any part of the declaration.

37. Labels not to contain false or misleading statements—A label shall not contain any statement, claim, design, device, fancy name or abbreviation which is false or misleading in any particular concerning the food contained in the package, or concerning the quantity or the nutritive value or in relation to the place of origin of the said food.

Provided that this rule shall not apply in respect of established trade or fancy names of confectionery, biscuits and sweets, such as Barley sugar, Bulls Eye, Cream Cracker, or in respect of aerated waters such as Ginger Beer or Gold Spot or any other name in existence in international trade practice.

Statutory Changes :—The proviso to rule 37 has been added by S. R. O. 2755, dated November, 20, 1956.

38. Labels not to contain reference to Act or rules contradictory to required particulars—The label shall not contain any reference to the Act or any of these rules or any comment on, or reference to, or explanation of any particulars or declaration required by the Act or any of these rules to be included in the label which directly or by implication, contradicts, qualifies or modifies such particulars or declaration.

39. Labels not to use words implying recommendation by medical profession—There shall not appear in the label of any package containing food for sale the words "recommended by the medical profession" or any words which imply or suggest that the food is recommended, prescribed, or approved by medical practitioners.

40. Unauthorised use of words showing imitation prohibited—

(1) There shall not be written in the statement or label attached to any package containing any article of food the word "imitation" or any word, or words implying that the article is a substitute for any food, unless the use of the said word or words is specifically permitted under these rules.

(2) Any beverage which does not contain at least ten per centum of fruit juice by weight in its composition shall not be described as a fruit syrup, fruit juice, squash or cordial or crush and shall be described as a synthetic syrup. Every synthetic syrup shall be clearly and conspicuously marked on the label as a "SYNTHETIC" product, and no container containing such product shall have a label, whether attached thereto or

printed on the wrapper of such container, or otherwise, which may lead the consumer into believing that it is a fruit product. Neither the word "FRUIT" shall be used in describing such a product, nor shall it be sold under the cover of a label which carries picture of any fruit.

Aerated water containing no fruit juice or pulp shall not have a label which leads the consumer into believing that it is a fruit product.

Statutory Changes : existing rule 40 has been renumbered as sub-rule (1) thereof and sub-rule (2) has been inserted there-after by S. R. O 2755 dated November 20, 1956.

41. Imitations not to be marked pure—The word "pure" or any word or words of the same significance shall not be included in the label of a package that contains an imitation of any food.

42. Form of labels—(A) Coffee Chicory Mixture - (i) Every package containing a mixture of coffee and chicory shall have affixed to it a label upon which shall be printed the following declaration :

Coffee blended with chicory	
This mixture contains:	
Coffee	per cent
Chicory	per cent

Statutory Changes : Sub-rules (ii) and (iii) of the original rules have been deleted by S. R. O 2755, dated November 20, 1956.

(B) Condensed milk or desiccated (Dried) Milk—(i) Every package containing condensed milk or desiccated (dried) milk shall bear a label upon which is printed such one of the following declarations as may be applicable or such other declaration substantially to the like effect as may be allowed by the State Government,

(a) In the case of condensed full cream milk (Unsweetened).

CONDENCED FULL CREAM MILK (UNSWEETENED)
This tin contains the equivalent of (x).....pints of milk

(b) In the case of condensed full cream milk (Sweetened)

CONDENSED FULL CREAM MILK
SWEETENED

This tin contains the equivalent of
(x).....pints of milk, with sugar added

(c) In the case of condensed skimmed milk (Unsweetened)

CONDENSED MACHINE-SKIMMED MILK
OR
CONDENSED SKIMMED MILK
(UNSWEETENED)

UNFIT FOR BABIES

This tin contains the equivalent of
(x).....pints of milk

(d) In the case of condensed skimmed milk (Sweetened)

CONDENSED MACHINE-SKIMMED MILK
OR
CONDENSED SKIMMED MILK

UNFIT FOR BABIES

This tin contains the equivalent
(x).....pints of milk with sugar added

(e) In the case of desiccated (dried) full cream milk :

DRIED FULL CREAM MILK

This tin contains the equivalent of
(x)....pints of milk.

(f) In the case of desiccated (dried) partlyskimmed milk :

DESICCATED (DRIED) PARTLY SKIMMED MILK

Should not be used for babies
EXCEPT under medical advice

This tin contains the equivalent of

(x) - ...pints of milk

(g) In the case of desiccated (dried) skimmed milk :

DESICCATED (DRIED) SKIMMED MILK

UNFIT FOR BABIES

This tin contains the equivalent of

(x) - ...pints of skimmed milk

(ii) The declaration shall in each case be completed by inserting at (x) the appropriate number in words and in figures, for example, "one and half ($1\frac{1}{2}$)", any fraction being expressed as eighth, quarters or a half as the case may be. For the purpose of deciding the equivalent of pints of milk or skimmed milk under these rules, 'milk' means milk which contains not less than 12.4 percent of total milk solids (including not less than 3.6 per cent of milk fat and 'skimmed milk' means milk which contains not less than 9 per cent of milk solids other than milk fat.

(iii) There shall not be placed on any package containing condensed milk or desiccated (dried) milk any comment on, explanation of, or reference to either the statement of equivalence, contained in the prescribed declaration or on the words "Machine skimmed" or "unfit for babies" except instructions as to dilution as follows :

"To make a fluid not below the composition of fresh milk or skimmed milk (as the case may be) with the contents of this package, add (here insert the number of parts) of water by volume to one part by volume of this condensed milk or desiccated (dried) milk".

(iv) Wherever the word "milk" appears on the label of a package condensed skimmed milk or of desiccated (dried skimmed milk as the description or part of the description of the contents, it shall be immediately preceded or followed by the word "machine skimmed" or "skimmed" or "partly skimmed" as the case may be.

(C) Ice-Cream—Every dealer in ice-cream or mixed ice-cream who, in the street or other place of public resort sells or offers or exposes for sale, ice-cream or ice candy from a stall or from a cart, barrow or other vehicle, or from a basket, phial, tray or other container used without a staff or a vehicle, shall have his name and address along with the name and address of the manufacturer, if any, legibly and conspicuously displayed on the stall, vehicle or container, as the case may be.

Statutory Changes: In sub-rule (i) (f) the word 'cream' in the form of declaration and in sub-rule (iii) the word 'or cream milk' occurring after the words 'skimmed milk' have been omitted by S. R. O. 2755, dated November 20, 1956

43. Notice of addition, admixture or deficiency in food -

(1) Every advertisement and every price or trade list or label for an article of food which contains an addition, admixture or deficiency shall describe the food as containing such addition, admixture or deficiency and shall also specify the nature and quantity of such addition, admixture or deficiency. No such advertisement or price or trade list or label attached to the container of the food shall contain any words which might imply that the food is pure.

(2) Every package, containing a food which is not pure by reason of any addition, admixture or deficiency shall be labelled with an adhesive label which shall have the following declaration -

DECLARATION

This (a).....contains an admixture/addition of not more than (b).....per cent of/international units of (c)per ounce.

(a) Here insert the name of food

(b) Here insert the quantity of admixture which may be present.

(c) Here insert the name of the admixture or the name of the ingredient which is deficient.

Where the context demands it, the words 'contains an admixture of' shall be replaced by the words 'contains an addition of or is deficient in'.

(3) Unless the vendor of a food containing an addition, admixture or deficiency, has reason to believe that the purchaser is able to read and understand the declaratory label, he shall give the purchaser, if asked, the information contained in the declaratory label by word of mouth at the time of sale.

(4) Nothing contained in this rule shall be deemed to authorise any person to sell any article of food required under the Act or these rules to be sold in pure condition, otherwise than in its pure condition.

(5) Nothing contained in this rule shall apply in the case of sweets, confectionary, biscuits, bakery products, processed fruits, aerated water and vegetables.

Statutory Changes : The form of declaration in sub-rule (2) has been substituted for the existing form and sub-rule (5) has been inserted after sub-rule 4) by S. R. O. 2755, dated November 2, 1956.

62. Misuse of another man's property mark or trade mark : Misbranding of an article of food can be by misuse of another man's property mark or a trade mark which is an offence under the Indian Penal Code and the subject is dealt with in sections 478 to 489 of the I. P. C.

63 Some judgments helpful in deciding whether there has been misbranding by mis-use of another man's property mark or trade mark : (1). In deciding whether one get-up is similar to another or is calculated to deceive purchasers into believing that they are purchasing the article of the other, one must remember the class of persons who are purchasers of the article in question. While the Judge must not surrender independent judgment to any witness whatsoever, he must, at the same time in order to arrive at a proper conclusion not disregard the evidence adduced in a particular case before him. In cases of infringement of patents instances of actual deception need not be proved if the court is otherwise satisfied of the probability of the deception. Where the article cannot be denoted by a proper descriptive name, but the person inventing or discovering it chooses to describe the article by a fancy name, and manufactures or sells the same under that fancy name, no one is allowed to appropriate that name and manufacture and sell the article under that fancy name (i)

(i) *Udendra V. Union Drug Company* A.I.R. 1926 Cal. 837=43 C.L.J. 405=96 I.C. 667.

2. Whether the defendant had acquired the good will of any business, and whether the defendant was properly on the register in respect of a mark which differs slightly from the mark actually in use by the defendant are irrelevant matters when the only question to decide is whether the mark which the defendant used infringes the plaintiff's registered mark. When in a passing off action there is no evidence before the court of confusion actual or probable, the question for determination whether the mark used by the defendant is 'similar' to the plaintiff's registered mark must be answered by court, unaided by outside evidence, after a comparison of the defendant's mark as used with the plaintiff's registered mark not placing them side by side, but by asking itself whether, having due regard to relevant surrounding circumstances, the defendant's marks as used is similar to the plaintiff's registered mark as it would be remembered by persons possessed of an average memory with its usual imperfections (a).

3. It is well settled that it is for the court to decide whether having regard to the appearance of the marks and of the goods, the class of people to whom the goods are to be sold are likely to be deceived or not.

The plaintiffs were carrying on business in Jullundur and were importing chaff-cutter knives with a figure of lion engraved thereon and the words "lion brand" underneath that figure from various countries in Europe since 1926-27. The defendant firm carried on business in Bulandshahr and in December 1940 started manufacturing chaff-cutter knives in their factory with a mark consisting of a lion within what is called a map of India and bearing the words "lion brand" underneath that figure. The plaintiffs brought a passing off action;

Held, that, although the two marks were not exactly identical, but the defendants mark was a colourable imitation of the plaintiff's mark and was likely to mislead customers.

Held, also, that the defendants by using the mark that they did on the knives manufactured by them infringed the plaintiff's mark (b)

4. The test is not that the trade mark in question is an exact or substantial copy of the trade-mark used by the complainant but whether the imitation of the trade-mark of the complainant has been done in a manner likely to cause the trade mark in question to be mistaken for the trade-mark of the complainant. It is the totality of impression which is likely to be left by the trade-

(a) Coca Cola Company Vs. Pepsi Cola Company=A.I.R. 1942 P. C. 4 =202 I. C. 203=8 B. R. 889.

(b) Bhagwan Das Vs. Watkins Mayor & Co.=1955 P.L.R. 463.

marks in the mind of a probable purchaser that has to be considered; the differences on non-essential points are not important(c).

5. It is not necessary to constitute an offence under S. 486 that the label should be exactly identical. If there is similarity between the two labels so as to mislead an unsuspecting customer, the requirement of the law is satisfied. But where upon the evidence it is found that the complainant has not proved that his label had been in existence for 10 to 12 years as suggested by him, it is not possible to hold that the accused has committed an infringement of the label. If it had been shown by the complainant that his label was in existence for a long time, that is to say, for at least 10 to 15 years, then it would be possible to hold that there was a resemblance between the labels (d).

6. In the case of piracy of a trade-mark the person, who is entitled to the mark must be guided by reason and good sense. It may not be worth while to spend money on every man of straw who comes in his way and the person might not forthwith prosecute the infringer giving an undertaking not to violate, the right in future, the mere fact of his omission to prosecute in earlier cases does not in any way deprive the person of his right to an injunction suit.

Acquiescence is only a form of an estoppel and it is of the essence of the acquiescence that the party acquiescing should be aware of and by words and conduct should represent that he assents to what is violation of his rights and that the person to whom such representation is made should be ignorant of the other party's right and should have been deluded by the representation into, thinking that his wrongful action was assented to by the other party.

Where both the parties deal in the same manufacture the mere fact that the dealers in those manufactures are not deceived by the labels does not conclude the case. It has to be considered what class of people buy the manufacture (e).

7. In the case of an infringement of trade mark no general rule can be laid down as to what is or is not a mere colourable variation. Standards differ and education is one of the factors. All which can be done is to ascertain in every case as it occurs whether there is such a resemblance as to deceive a purchaser using ordinary caution. [Leather Cloth Company Vs American Leather Company 11 H. L. C. 523 Foll (f).]

(c) Haveli Ram Vs. The State=A.I.R. 1956 All. 132=1955 All. L.J. 701=1956 Cr. L. J. 183,

(d) Nur Mohd Vs. State=A.I.R. 1956 Bom. 700=1956 Cr. L.J. 1302

(e) Moolji Sicca & Co. Vs. Ramjahali=A.I.R. 1930 Cal. 678=129 I.C. 612.

(f) Swadeshi Mill Co. Vs. Juggilal=A.I.R. 1927 All. 81=24 A.L.J. 975=99 I.C. 353=49 All. 92.

In case of infringement of trade mark it is the function of the Judge to say whether two designs are similar and not for a witness to express an opinion on the point.

If the goods of a manufacture from the mark or device he has used have become known in the market by a particular name the adoption by a rival trader of any mark which will cause his goods to bear the same name in the market may be as such an invasion of right of that rival as the actual copy of his device. [Seixo Vs. Provezende. L. R. 1, Ch. D. 192. Foll (g).]

64. Section 2(x)-“Package” :—“Package” means a box, bottle, casket, tin, barrel, case, receptacle, sack, bag, wrapper or other thing in which as article of food is placed or packed.

The rules regarding packing of articles of food are given in Part VII of the rules framed by the Central Government under Sec. 23 which are given in the appendix.

65. Section 2(xi)-“Premises” : “Premises” include any shop, stall or place where any article of food is sold or manufactured or stored for sale.

The definition of the term “premises” is very wide and includes even an open site provided it is used for sale of article of food or for manufacturing or storing for sale of an article of food.

66. Section 2(xii)-“Prescribed” : The word prescribed means prescribed by rules made under this Act.

67. Sections 2(xiii)-“Sale” :—“Sale” with its grammatical variations and cognate expressions, means the sale of any article of food, whether for cash or on credit or by way of exchange and whether by wholesale or retail, for human consumption or use, or for analysis and includes an agreement for sale, an offer for sale the exposing for sale or having in possession for sale of any such article, and includes also an attempt to sell any such article.

68. Definition analysed :—The word ‘Sale’ (with its grammatical variations and cognate expressions) means—

1. sale of an article of food ;
 2. whether for cash or on credit or by way of exchange ;
 3. whether by wholesale or retail ;
 4. whether for human consumption or use, or for analysis ;
- and includes,
1. an agreement for sale ;
 2. an offer for sale ;

(g) Harrison V. Luke (1845). 14 M. & W. 139. See also Gannon Dun-kerley & Co. V. State of Madras. A.I.R. 1954 Mad 1130.

3. the exposing for sale ;
4. having in possession for sale;
5. an attempt to sell.

69. **Definition of sale under the Punjab Pure Food Act, U. P Pure Food Act, and the Sale of Goods Act:** The word "sale" has been defined in Sec. 3 (h) of the Punjab Pure Food Act, 1929, as follow :

"Sale means a transfer of ownership in exchange for a price paid or promised, or part paid or part promised, and includes barter, or offering or attempting to sell, or receiving for sale, or having in possession for sale, or exposing for sale or sending or delivering for sale or causing or allowing to be sold, offered, or exposed for sale, and refers only to sale for human consumption or use."

According to the U P. Pure Food Act the word "sale" has been defined in Sec. 2 as follows :—

"Sale" means, sale as defined in Sec. 4 (3) of the Indian Sale of Goods Act, and includes sale by hawking.

The word sale have been defined in The Indian Sale of Goods Act, 1930, Act No. IX of 1930, in Sec. 4, which is reproduced below :—

4. (1) A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price. There may be a contract of sale between one part-owner and another.

(2) A contract of sale may be absolute or conditional.

(3) Where under a contract of sale the property in the goods is transferred from the seller to the buyer the contract is called a sale, but where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell.

(4) An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.

70. **Definition of sale extraordinarily wide under the Central Act :—**The definition of sale as given in the Central Act (No. XXXVII of 1954) is extraordinarily wide and includes almost every conceivable transaction which normally can never be covered by the definition of sale.

71. **Exchange distinguished from sale :—**Where the consideration for the transfer of property in goods from one person to

another consists of the delivery of other goods, the contract is not a contract of sale, but is a contract of exchange or barter(g).

But if the consideration for such a transfer consists partly of the delivery of goods and partly the payment of money, it seems that the contract is a contract of sale (h). If the goods are to be paid for by money and other goods, on which a fixed value is put, the contract may be treated as one of sale for the aggregate sum as the price. (i). If the goods on either side are delivered, any money balance payable may be recovered as on a contract of sale. (j). Similarly if the exchange is made for goods or alternatively for price, it is sale (k).

72. The following cases are given below to illustrate and clear the meaning of the word sale :—

1. A sale would none the less be a sale, though the purchase price was not immediately paid on the delivery of the goods. The liability of the purchaser to pay the price would remain (a).

2 The service of ghee by a hotel keeper with meals to his customers amounts to sale. The price of the ghee so served by him being necessarily included in the price of the meals (b).

3. Transfer for price, of adulterated milk by Co-operative Milk Society registered under the Madras Co-operative Societies Act to one of its member is a sale. The Society as such being a body corporate, has separate existence apart from its individual members (c).

4. Where a Sanitary Inspector purchased milk and thereafter he noticed that it was adulterated and then took out a sample and forwarded to the authorities. It was held, that the fact that the purchaser happens to be a Sanitary Inspector would not make the said transaction, any the less, a purchase (d).

(g) See foot note on page 91.

(h) Aldridge V. Johnson (1857) 7 E & B. 885. 110 R.R. 875 ; Sheldon V. Cox (1824) 3 B & C. 420.

(i) Hands V. Burton (1808). 9 East 349, 12 Digest 459.

(j) Sheldon V. Cox (1824), 3 B & C. 420; Ingram V. Shirley. (1816). 1 Stark 185; 39 Digest 601 (balance struck payable in money); Garey V. Pyke (1839) 10 Ad and El. 512. 39 Digest 646 (no balance struck). Halsbury, Laws of England 2nd. Edn. Vol XXIX. P. 6.

(k) South Australian Insurance Co. V. Randel (1869) L.R. 3 P. C. 101.

(a) Public Prosecutor V. Sannidhi Sriranganayakulu A.I.R. 1949 Mad. 629=1949 M.W.N. 282=1949-2 M.L.J. 15=50 Cr. L. J. 893.

(b) Public Prosecutor V. Narayana Ayaar—A I.R 1940 Mad. 173=50 M. L.W. 790=41 Cr. L.J. 377=(1939) M.W.N. 1128 (1)=1939 M. Cr. C 288=186 I C. 785.

(c) Public Prosecutor V. Ramachandrayya—A.I.R. 1948 Mad. 329=61 M.L.W. 114=1948-1 M.L.J. 117=1948 M.W.N.159=148 A W.R. Sup. 54=1948. O.A. Sup. 54=49 Cr. L.J 395.

(d) Public Prosecutor V. Narayana Singh—A.I.R. 1944 Mad 236=1944 -1 M.L.J. 16=57 M.L.W. 15=214 I C.94-1944 M.W.N 559=45 Cr. L.J. 724.

5. The accused took delivery of a consignment of tins of mustard oil at the railway station for the purpose of selling it. On the same day while the goods were actually on the railway premises, a sample was taken from the tins by the Sanitary Inspector and it was found that the mustard oil contained therein was adulterated. The accused was subsequently prosecuted and convicted. Held that although the goods had not actually left the railway premises they were never the less being stored for sale by the accused. The accused came into physical possession of the consignment as soon as he took delivery thereof at the railway station and from the moment that he took such delivery until the goods were actually exposed for sale in a shop there should be no doubt that he was actually storing them with a view to their ultimate disposal by sale and consequently the requisite initial onus must be taken to have been discharged by the prosecution. The fact that the accused could have had no opportunity to examine the nature of the goods between the time when he took delivery of them and the time when the sample was taken was no defence (e).

6. When the article supplied to the Inspector is found to be adulterated, there can be no doubt that the offence under clause (b) of sub-sec 1 of Sec 4 of the Bombay Prevention of Adulteration Act has been committed, for the article which was kept or exposed for sale was not of the nature, substance or quality which it purported to be. There is no reason why in such a case the article should not be held to have been sold to the Inspector who has paid for the article purchased by him like any other customer. It is clear that the legislature wanted such a transaction to be regarded as a sale for the purpose of the Act, from the fact that Sec. 11 itself uses the words "purchase" and "sell" in regard to the Food Inspector obtaining an article for the purpose of analysis and paying the price for it. It cannot be urged, therefore, that as there is an obligation to sell an article of food exposed or kept for sale to an Inspector, the sale of the article to him is not a voluntary sale and that consequently it cannot be regarded as a sale. Nor can it be contended that when an Inspector purchases an article for the purpose of analysis and not for his own use there is no sale "to the prejudice of the purchaser" because the Inspector is not personally affected whether the article is pure or adulterated. The words "to the prejudice of the purchaser" have been inserted in section in order to ensure that the supplying of an article, superior in quality to that demanded, would not ordinarily be regarded as an offence under the section. These words mean to the prejudice of an ordinary person who purchases or may purchase such an article. If an ordinary person is likely to be prejudiced by the purchase of such an article the offence under Sec.

(e) *Hari Rakshak Dutt, V. District Board, Birbhum* - A.I.R. 1941 Cal. 150=44 C.W.N. 1139=72 Cr. L.J. 531=1941. C. 136=42 Cr. L.J. 522.

4(1)(a) would be committed, even though the actual purchaser in the particular case may not have been prejudiced. Therefore even when an Inspector purchases an article or sample of food for the purpose of analysis the transaction is sale. (f).

7. A Sanitary Inspector went and demanded a small quantity of Bengal grain dhal and flour kept for sale in a godown. He was sold a pavu for two annas and the sale was acknowledged by the clerk of the firm in the receipt which was properly proved. On examination, it was found that they contained artificial, water-soluble-yellow-colouring matter derived from coal-tar. Held that the transaction amounted to sale (g).

8. When a particular article of food is kept in a shop, there will be presumption that it is kept there for the purposes of sale (h).

Note—this judgment though relating to a drug is relevant in the case of article of food as well, being a parallel case.

9. Sanitary Inspector purchasing some butter for the purpose of analysis. Transaction amounts to sale (i)

10. One can quite understand compulsory acquisition by exercise of statutory authority from being held not to be a sale at all but if without any such compulsion there has been a transfer of property in the goods for price it does not appear that there is any reason, why it should be taken out of the Act. In the case of storing there is no question of actual sale and therefore, there is no question of compulsory acquisition vitiating any sale. The gist of the offence is the storing itself. The purpose of storing is that it is for future sale. Storing is storing whether the article is sold or not sold to the Sanitary Inspector (j).

11. Sale or possession for the purpose of sale of mixture of gingelly oil with groundnut oil is prohibited. The prohibition is absolute for whatever purpose the consumer may take it or

(f) State V. Amratlal Bhogilal - A.I.R. 1954 Bom. 216.

(g) Public Prosecutor V. Dada Haji Ebrahim - A I.R. 1953 Mad. 241=1952 M.W.N. 748 =1952 2 M.L.J. 765 (1948 1 M.L.J. 118 Foll.)

(h) Qasim Bhai V. State - A.I.R. 1956 All. 703=1956 A. L. J. 179=1956 All. W.R. (H.C.) 251=1956 Cr. L.J. 13180.

(i) Public Prosecutor V. Annamalai Chettiark K.V.R. (1953) 1 M.L.J. 593=1953 M.W.N. 395=1953 Cr. L.J. 1639=A.I.R. 1953 Mad. 862. (A.I.R.) 1938 Mad. 541, (1942) 2 M.L.J. 172=A.I.R. 1942 Mad. 609=43 Cr. L.J. 863. not followed. (1948) 1 M.L.J. 117=A.I.R. 1948 Mad. 329 relied upon).

(j) Makhan Lal V. Ram Bhakat Sharma - 1953 Cr. L.J. 1134=A.I.R. 1953 Cal. 485.

the seller may sell it, whether as an article of food or for use as lamp oil (*k*)

12. A transaction which can be described as purchase can only be based on passing of consideration. When the Sanitary Inspector did not actually pay any price as the accused did not accept and there is no evidence that he promised to pay the price in future, the transaction cannot be held to be a purchase (*l*).

13. Milk offered for sale found to contain 14% of water. Held accused is guilty. The fact that the milk was not otherwise adulterated is immaterial (*m*).

14. Where a Halvai who does not sell ghee as such but sells sweetmeat is found in possession of ghee below standard his possessing ghee is covered by the definition of sale (*n*).

Section 2 (xv)- "Unwholesome" and "Noxious" :—The word "unwholesome" and "noxious" when used in relation to an article of food mean respectively that the article is harmful to health or repugnant to human use.

Noxious as food or drink :—The word "noxious" means injurious to health *e. g* , paddy soaked in dirty water, (*o*) or toddy in which germs have germinated (*p*) or bread mixed with alum (*q*). It is not an offence to sell inferior food cheap if it is not shown to be noxious (*r*). A person who mixes pigs fat with ghee intending to sell the mixture as food or knowing it to be likely that it will be sold as such does not commit the offence on the ground that the said article of food is noxious as food. It is true that the mixing of 'pigs fat' with ghee and selling the mixture would be noxious to the religious and social feelings of both Hindus and Mohammedans but such an act would not come within the meaning of the expression noxious as food. The expression obviously means,

(*k*) In re. Venka Bhimaraju—A.I.R. 1949 Mad. 623=50 Cr. L.J. 839=1949 M.W.N. 234=1949-1 M.L.J. 198 (A.I.R. 1948 Mad. 618 relied).

(*l*) Rawjee Prasad V The State--A.I.R. 1955 N.U.C. 451 (A) Pat.

(*m*) Public Prosecutor, Madras V. Panchakarla Sooramma--A.I.R. 1941 Mad. 617=1941 M.W.N. 379=(1941) 1 M.L.J. 716=42 Cr. L.J. 795=14 R.M. 244=195 I.C. 713.

(*n*) Dewan Singh V. Emperor-- 39 P L.R. 459=A.I.R. 1937 Lah. 702=10 R L. 175=38 Cr. L.J. 1029=171 I.C. 16.

(*o*) Cunnvappa, (1818) 1 Weir 227.

(*p*) Ediga Narasappa, (1894) 1 Weir 228.

(*q*) Dixon, (1814) 3 M & S 11.

(*r*) Gunesha, (1873) P S. No. 15 of 1873.

unwholesome as food, or injurious to health and repugnant to one's feelings. The word "noxious" had it stood by itself, might have had wider meaning but the expression is noxious as food and not merely noxious (s). Even adulteration of milk with water does not make the adulterated milk as noxious (t), though the sale of the said adulterated milk as pure milk is an offence under the Act.

SECTION 3

CENTRAL COMMITTEE FOR FOOD STANDARD
AND CENTRAL FOOD LABORATORY

3. *The Central Committee for food standards.* (1) The Central Government shall, as soon as may be after the commencement of this Act, constitute a committee called the Central Committee for Food Standards to advise the Central Government and the State Governments on matters arising out of the administration of this Act and to carry out the other functions assigned to it under this Act.

(2) The Committee shall consist of the following members namely :—

- (a) the Director-General, Health Services, *ex-officio*, who shall be the Chairman ;
- (b) the Director of the Central Food Laboratory, *ex-officio* ;
- (c) two experts nominated by the Central Government ;
- (d) one representative each of the Central Ministries of Food and Agriculture, Commerce and Industry, Railway and Defence nominated by the Central Government ;
- (e) one representative each nominated by the Government of each [* * *] State ;
- (f) two representatives nominated by the Central Government to represent the [Union Territories],

(s) Per Suleman Judge in Ram Dayal (1923) 46 All. 94=26 Cr. L.J. 220=A.I.R. 1924 All. 214.

(t) Dhawa, (1924) 1 Lah. C. 273=26 Cr. L.J. 1441=A.I.R., 1926. Lah. 49.

- (g) two representatives of Industry and Commerce nominated by the Central Government ;
- (h) one representative of the medical profession nominated by the Indian Council of Medical Research ;

(3) The members of the Committee referred to clauses (c), (d), (e), (f), (g), and (h) of sub-sec. (2) shall, unless their seats become vacant earlier by resignation, death or otherwise, be entitled to hold office for three years and shall be eligible for re-nomination.

(4) The functions of the Committee may be exercised notwithstanding any vacancy therein.

(5) The Committee may appoint such and so many sub-committees as it deems fit and may appoint to them persons who are not members of the Committee to exercise such powers and perform such duties as may, subject to such conditions, if any, as the Committee may impose, be delegated to them by the Committee.

(6) The Committee may, subject to the previous approval of the Central Government, make by-laws for the purpose of regulating its own procedure and the transaction of its business.

S Y N O P S I S

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| 1. Powers and Functions of the Committee. | 3. Definition and Standards of Quality of Articles of Food. |
| 2. Government Notification Constituting the Central Committee of Food Standards. | |

COMMENTARY.

1. **Powers and Functions of the Committee** :— 1. Under this section the Central Government has to constitute a Committee called the Central Committee for Food Standards to advise the Central Government and the State Governments on matters arising out of the administration of this Act and to carry out the other functions assigned to it under the Act.

2. The Committee so constituted under Sec. 3 consisting

members is quite a fairly large representative body of experts to advise the Central and the State Governments on matters arising out of the administration of the Act and to carry out the functions assigned to it under the Act and so also to apply the rules framed by the Central and the State Governments under Secs. 23 & 24 of the Act respectively. The said Committee has no concern with the day to day working of the Central Food Laboratory or of the Public Analysts in the States. Under Sec. 3 of the Act the Committee has to be consulted by the Central Government in framing rules prescribing the functions of the Central Food Laboratory and the procedure for submission to the Laboratory of the sample of articles of food for analysis or the forms of the Laboratory's reports thereon and the fees payable in respect thereof and such other matters as may be necessary or expedient to enable the said Laboratory to carry out its functions.

3. This section also provides for the constitution of the Committee as well as its functions and its powers.

4. Under section 23 of the Act the Central Government is authorised to make rules after consultation with the Committee, subject to the condition of previous publication on the various subjects mentioned in Sec. 23. Similarly the State Governments under Sec. 24 of the Act have been authorised to make rules after consultation with the Committee, and subject to the condition of previous publication on the various subjects mentioned in the section.

2. Government Notification Constituting the Central Committee of Food Standards : The Government of India by Notification S. R. O 1236 F 12-54 54-D. S. dated 1st of June, 1955 has constituted the Central Committee of Food Standards which has the following members :

1. Director-General, Health Services, Chairman, *ex-officio*.
2. Director, Central Food Laboratory, *ex-officio*.
Being experts nominated by the Central Government under clause (c) of sub-section (2) of section 3.
3. Dr. K. Mitra, Assistant Director-General Health Services, New Delhi.
4. Dr. V. Subramanyan, Director, Central Food Technological Research Institute, Mysore.
Being representatives of the Central Ministers of Food and Agriculture, Commerce and Industry, Railways and Defence, nominated by the Central Government under clause (d) of sub-section (2) of section 3.

5. Dr. M. B. Ghatge, Agriculture Marketing Adviser, Ministry of Food and Agriculture, New Delhi.
 6. Sri V. A. Mehta, Assistant Development Officer, Development 'Wing', Ministry of Commerce and Industry, New Delhi.
 7. Dr. L. N. Goel, Chief Medical Officer. Northern Railway, New Delhi.
 8. Lt. Col. A. G. Fernandes, A. M. C. Assistant Director of Supplies, Q. M. G's Branch, Army Headquarters, New Delhi.
- Being representatives nominated by the Government of each Part B State under clause (e) of sub-section (2) of section 3.
9. Sri S. Narayana Iyer, Government Analyst (Food and Drugs), Madras.
 10. Dr. D. Subba Rao, Director of Health (Andhra), Kurnool.
 11. Sri S. T. Rodda, Assistant Director of Public Health, Incharge of Public Health Laboratory, Poona.
 12. Sri Sachindra Nath Mitra, Public Health Analyst for Food and Water, West Bengal Public Health Laboratories, Calcutta.
 13. Dr. S. Roy, Public Analyst, Government of Uttar Pradesh, Lucknow.
 14. Dr. B. D. Kochhar, Public Analyst, Government of Punjab, Ambala Cantonment.
 15. Dr. N. K. Roy, Director, Madhya Pradesh Health Institute, Nagpur.
 16. Sri B. K. Datta Roy, Public Analyst to the Government of Assam, Shillong.
 17. Sri Amarendranath Das, Public Analyst to the Government of Orissa, State Public Health Laboratory, Cuttack.
 18. Dr. Shankar Lal Gargye, Director of Health Services, Madhya Bharat, Gwalior.
 19. Dr. S. C. Roy, Chemical Analyst to the Government of Bihar, Patna.
 20. Sri K. V. Krishna Warler, Public Analyst, Government Travancore-Cochin, Trivandrum.
 21. Sri P. N. Bhargava, Chief Analyst, Rajasthan, Jaipur.
 22. Sri. S. D. Bhatia, Chemical Examiner, State Analytical Laboratory, Patiala.
 23. Dr. S. Seshagiri Rau, Director of Public Health Govern-

ment of Mysore, Mysore.

24. Sri R. K. Trivedi, Director of Health Services, Saurashtra.
25. Dr L. D. Khatri, Director, Medical and Public Health Services, Hyderabad State, Hyderabad.
Being representatives nominated by the Central Government to represent the Part C States, under clause (f) of sub-section (2) of Section 3.
26. Major M. S. Chadha, Director of Health Services, Delhi State, Delhi.
27. Dr. Tajwiz Singh, Assistant Director of Health Services, Himachal Pradesh, Simla.
Being representatives of Industry and Commerce nominated by the Central Government under clause(g) of sub-section (2) of Section 3.
28. Sri Gokalchand Hira Chand, Walchandnagar Industries Ltd., Construction House, Ballard Estate, Fort, Bombay.
29. Sri P. D Bhargava Midland Fruit and Vegetable Products, Masani Railway Station, Mathura, Uttar Pradesh.
Being the representative of the Medical Profession nominated by the Indian Council of Medical Research under clause (h) of sub-section 3.
30. Dr. C. Gopalan, Deputy Director, Nutrition Research Laboratories, Coonoor.

3. Definitions and Standards of Quality of Articles of Food :

According to rule No. 5 under Part III under the heading "Definitions and Standards of Quality" standards of quality of the various articles of food have been specified in Appendix B to the rules framed by the Central Government with the advice of the Central Committee for Food Standards. The said rules have been given in the appendix.

SECTION 4

4. *Central Food Laboratory.* (1) The Central Government may, by notification in the official Gazette,—

- (a) establish a Central Food Laboratory ; or
- (b) specify any laboratory or institute as a Central Food Laboratory ; to carry out the functions entrusted to the Central Food Laboratory by this Act or any rules made under this Act.

(2) The Central Government may, after consultation with the committee, make rules prescribing ;

- (a) the functions of the Central Food Laboratory ;
- (b) the procedure for the submission to the said Laboratory of samples of articles of food for analysis or tests, the forms of the Laboratory's reports thereon and the fees payable in respect of such reports ;
- (c) such other matters as may be necessary or expedient to enable the said Laboratory to carry out its functions.

S Y N O P S I S

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| 1. Section explained and analysed. | 4. Procedure prescribed under the rules for sending samples to the Central Food Laboratory for analysis. |
| 2. Government notification establishing Central Food Laboratory. | 5. Forms of Memorandum to the Director and Certificate of Test by the Central Food Laboratory. |
| 3. Central Food Laboratory and its Functions (a) under the Act. (b) under the Rules. | 6. Fees payable for analysis. |

COMMENTARY

1. Section explained and analysed : Under this Section the Central Government ;

- (i) by Notification in the official Gazette has ;
 - (a) to establish a Central Food Laboratory ; or
 - (b) to specify any Laboratory or institute as the said Central Food Laboratory in order to carry out the functions entrusted to the same by this Act or the rules made thereunder.
- (ii) the Central Government has also to make rules after consultation with the Central Committee on the following matters :—
 - (a) the functions of the said Laboratory ;
 - (b) the procedure for submission of samples of articles of food for analysis or tests to the said Laboratory ;

- (c) prescribing the forms of the Laboratory's reports thereon ;
- (d) the fees payable in respect of such reports ;
- (e) such other matters as the Central Government thinks necessary or expedient to enable the Laboratory to carry out its functions.

2. Government Notification Establishing Central Food-Laboratory : The Central Government has by notification No. S. R. O. 1234 P. F. A./Sec. 4/F. II-4/55 D(1). dated 1st of June, 1955, has established the Central Food Laboratory in the premises of all India Institute of Hygiene and Public Health, 110, Chitranjan Avenue, Calcutta-12.

3. Central Food Laboratory and its Functions : The Central Food Laboratory has to perform its functions both under the Act as well as under the rules made thereunder.

(a) Under the Act.

(i) Under sec. 6(2) of the Act the custom collector, or any officer of the Government authorised by the Central Government in this behalf, may detain any imported package which he suspects to contain any article of food, the import of which is prohibited under sec. 5 of this Act and shall forthwith report such detention to the Director of the Central Food Laboratory and if required by him forward the package or send samples of any suspected article of food found therein to the said Laboratory.

(ii) Section 11 (1) (c) (iii)—When a Food Inspector takes sample of food for analysis, he shall retain the third part (of the sample) for production, in case any legal proceedings are taken or for analysis by the Director of the Central Food Laboratory under sub-section (2) of Sec 13, as the case may be. The relevant provision of Section 13 (2), (3), (4), (5) are also reproduced below:—

Section 13 (2) : After the institution of a prosecution under this Act the accused vendor or the complainant may, on payment of the prescribed fee, make an application to the Court for sending the part of the sample mentioned in sub-clause (i) of the section 11 to the Director of the Central Food Laboratory for a certificate, and on receipt of the application the Court shall first ascertain that the mark and seal or fastening as provided in clause (b) of sub-section (1) of section 11 are intact and may then despatch the part of the sample under its own seal to the Director of the Central Laboratory who shall thereupon send a certificate to the Court in the prescribed form within one month from the date of receipt of the sample, specifying the result of the analysis.

(3) The certificate issued by the Director of the Central

Food Laboratory under sub-section (2) shall supersede the report given by the Public Analyst under sub-section (1).

(4) Where a certificate obtained from the Director of the Central Food Laboratory under sub-section (2) is produced in any proceedings under this Act, or under sections 272 to 276 of the Indian Penal Code (Act XLV of 1860), it shall not be necessary in such proceeding to produce any part of the sample of food taken for analysis.

(5) Any document purporting to be a report signed by a Public Analyst, unless it has been superseded under sub-section (3), or any document purporting to be certificate signed by the Director of the Central Food Laboratory, may be used as evidence of the facts stated therein in any proceeding under this Act or under sections 272 to 276 of the Indian Penal Code (Act XLV of 1860).

(b) Under the rules.

The following rules are given in Part II of the rules made by the Central Government under Section 23 of the Act under the heading "The Central Food Laboratory".

3. Functions :—In addition to the functions entrusted to the Laboratory by the Act, the Laboratory shall carry out the following functions, namely :

- (a) analysis of samples of food sent by any officer or authority authorized by the Central Government for the purpose and submission of the certificate of analysis to the authorities concerned ;
- (b) investigations for the purpose of fixation of standards of any article of food ;
- (c) investigations in collaboration with the laboratories of Public Analysts in the various States for the purpose of standardizing methods of analysis.

4. Procedure prescribed under the rules for sending samples to the Central Food Laboratory for analysis : Rule No. 4. given in Part II of the rules lays down the procedure for sending samples to the Central Food Laboratory for analysis and is given below :-

Rule (4) Analysis of food samples—(1) Samples of food for analysis whether under sub-section (2) of section 13 of the Act or under clause (a) of rule 3 shall be sent either through a messenger or by registered post in a sealed packet, enclosed together with a memorandum in Form I in an outer cover addressed to the Director.

(2) The container as well as the outer covering of the packet shall be marked with a distinguishing number.

(3) A copy of the memorandum and a specimen impression of the seal used to seal the container and the cover shall be sent separately by registered post to the Director.

(4) On receipt of the packet, it shall be opened either by the Director or by an officer authorized in writing in that behalf by the Director, who shall record the condition of the seal on the container.

(5) After test or analysis, the certificate thereof shall be supplied forthwith to the sender in Form II.

(6) The fees payable in respect of such a certificate shall be Rs. 40/- per sample of food analysed.

(7) Certificates issued under these rules by the Laboratory shall be signed by the Director.

5. **Form of memorandum to the Director and Certificate of test by the Central Food Laboratory:** The forms to be used for sending the memorandum to the Director, Central Food Laboratory and of Certificate of test or analysis by the Central Food Laboratory are given in Appendix A of the rules and the same are reproduced below:

APPENDIX A.

FORM I

[See rule 4 (1)]

(Memorandum to the Director, Central Food Laboratory)

From

To

The Director,
Central Food Laboratory,

No.

dated the

19

Memorandum

I send herewith, under the provisions of Section 13 (2) of the Prevention of Food Adulteration Act, 1954, sample(s) of a food purporting to befor test or analysis and request that a report on the result of the test or analysis may be supplied to this Court.

1. Distinguishing No. on the container and outer covering.....
2. Particulars of offence alleged.....
3. Matter on which opinion required.....
A fee of Rs.has been deposited in Court.

Magistrate 1st Class/Presidency Magistrate.

— — — —

FORM II

[See rule 4 (5)]

(Certificate of test or analysis by the Central Food Laboratory)

Certified that the sample(s), bearing number..... — — pur-
porting to be a sample/samples of.....received on.....
with Memorandum No.....dated.....from.....
has/have been tested/analysed and that the result/results of such
test(s) are stated below:

.....

.....

2. The condition of the seals on the container and the
other covering on receipt was as follows :

.....

Director,
Central Food Laboratory.....

Place :

Date :

If opinion is required on any other matter, suitable para-
graph(s) may be added.

6. Fees payable for analysis :—The fees payable in respect
of a certificate given by Director of the Central Food Laboratory
is Rs. 40/- per sample of food analysed. Sub rule (6) of rule No.
4 given in Part II of the rules made by the Central Govern-
ment under section 23 of the Act was substituted for the old rule
by S. R. O. 2755, dated November 20, 1956 published in the
Government of India Gazette dated November 24, 1956 Part II
section 3 at Page 196.

SECTION 5

5. General provisions as to Food. Prohibition of certain articles of food. No person shall import into India—

- (i) any adulterated food ;
- (ii) any misbranded food ;
- (iii) any article of food for the import of which a licence is prescribed, except in accordance with the conditions of the licence ; and
- (iv) any article of food in contravention of any other provision of this Act or of any rule made thereunder.

SYNOPSIS

- | | |
|---|--|
| <ol style="list-style-type: none"> 1. Section explained and analysed. 2. Person. <ul style="list-style-type: none"> (a) Whether person includes a child (See commentary under section 7) 3. The person liable for the penalties in case section 5 is contravened by a company incorporated or by a firm. 4. Rules relating to license. 5. Conditions—meaning explained. 6. Punishment for contravention of the provisions of section 5. | <ol style="list-style-type: none"> 7. Only license holders punishable for breach of conditions of license and not his munim, agent, etc. 8. Law relating to penalty under the Sea Customs Act for contravention of the provisions of section 5. 9. Interpretation of Penalty clause u/s 167 (8) of the Sea Customs Act. 10. Necessity and scope of enquiry for order under Sec. 167 (8) Sea Customs Act. 11. Whether a confessional statement made before a customs official is hit by Sec. 25 of the Evidence Act. |
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COMMENTARY

1. Section explained and analysed :—This section is new and was not in any of the previous Provincial Acts relating to food adulteration. Sec. 5 prohibits any person from importing into India :

- (i) an adulterated article of food (as defined in Sec 2 (i));
- (ii) any misbranded article of food [as defined in Sec 2 (ix)]

- (iii) any article of food for the import of which a license is prescribed and required and except in accordance with the conditions of the license (see rules 50 and 51 relating to licenses given in the appendix)
- (iv) any article of food in contravention of any other provision of this Act and of any rule made thereunder.

2. Person :—The word “person” has not been defined in the Act. So we have to take the definition of the word “person” as given in Sec. 3 (42) of the General Clauses Act. “Person” shall include any Company or Association or body of individuals whether incorporated or not. Under this definition the word person includes also a firm. In section 11 I. P. C. the word person has been defined as including any company or association, or body of persons, whether incorporated or not.

3. The person liable for penalties, in case Sec. 5 is contravened by a Company incorporated or by a firm :—Section 17 of the Act deals with the subject and specifies the persons liable in such a case. Section 17 is reproduced below :

S. 17. Offences by Companies :

(1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly ;

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1) where an offence under this Act has been committed by a company and it is proved that offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation—For the purposes of this section :

- (a) “company” means any body corporate, and includes a firm or other association of individuals ; and
- (b) “director” in relation to a firm means partner in the firm.

✓ For commentary under section. 17 See section 17.

4. Rules relating to license : The Central Government has framed rules (50 & 51) under Sec. 23 of the Act relating to the conditions of license as given in the Appendix and the same are reproduced below :

:0. Conditions for Licence—(1) No person shall manufacture, sell, stock, distribute or exhibit for sale any of the following articles of food except under a license—

- (a) milk or skimmed milk or separated milk,
- (b) milk products, including khoa, cream, rabri, dehi, etc.
- (c) ghee,
- (d) butter,
- (e) charbi,
- (f) edible oils,
- (g) *
- (h) sweetmeats and savoury,
- (i) aerated water,
- (j) articles made out of flour including biscuits and other bakery products, or
- (k) any other article of food (except fruit products covered under the Fruit Products Order, 1955, and vegetable oil products or vanaspati, manufactured, stocked, sold or distributed by factories licensed for the purpose), which the State Government may by notification specify.

(2) The State Government or the local authority shall appoint licensing authorities.

(3) A licensing authority may with the approval of the State Government or the local authority by an order in writing delegate the power to sign licences and such other powers as may be specified in the order to any other person under his control.

(4) If articles of food are manufactured, stored or exhibited for sale at more than one place, separate application shall be made, and a separate license shall be issued, in respect of each such place :

Provided that this shall not apply to itinerant vendors who have no specified place of business and who will be licensed to conduct business in a particular area within the jurisdiction of the of the licensing authority.

(5) Before granting a license for manufacture, stock or exhibition of any of the articles of food in respect of which a licence is required, the licensing authority shall inspect the premises and satisfy itself that it is free from sanitary defects. The applicant for

the license shall have to make such alteration in the premises as may be required by the licensing authority for the grant of a licence.

(6) *

(7) Proprietors of hotels and restaurants who sell or expose for sale savouries, sweets or other articles of food shall put up a notice board containing separate lists of the articles which have been cooked in ghee, edible oil, hydrogenated vegetable oils and other fats for the information of the intending purchasers.

(8) Oils which are declared as not intended for human consumption or have been denatured, shall not be manufactured stored or sold in the same premises where edible oils are manufactured, stored or sold.

(9) No licensee shall employ in his work any person who is suffering from infectious, contagious or loathsome disease.

(10) No person shall manufacture, store or expose for sale or permit the sale of any article of food in any premises not effectively separated to the satisfaction of the licensing authority from any privy, urinal, sullage, drain or place or storage of foul and waste matter.

(11) All vessels used for the storage or manufacture of the articles intended for sale shall have proper covers to avoid contamination.

(12) Every manufacturer (including ghani operator) or wholesale dealer in butter, ghee, hydrogenated vegetable oils, edible oils, and other fats shall maintain a register showing the quantity manufactured, received or sold and the destination of each consignment of the substances sent out from his manufactory or place of business, and shall present such register for inspection whenever required to do so by the licensing authority.

(13) An itinerant vendor granted a licence under these rules shall carry a metallic badge showing clearly the licence number and the nature of the article for the sale of which the licence has been granted.

(14) The nature of articles of food for the sale of which a licence is required under these rules shall be mentioned in the application for licence. Any objectionable, ambiguous or misleading trade name shall not be approved by the licensing authority,

(15) Every licensee who sells any food, shall display a notice board containing the nature of the articles which he is exposing or offering for sale.

Note.—Statutory Changes :—In sub-rule (1), item (g) the entry relating to “waste ghee” and sub-rule (6) have been omitted and in item (k) the words in the brackets have been substituted for

the old ones and in sub-rule (12) the brackets and the words "(including ghani operator)" have been inserted by S. R. O. 2755, dated November 20, 1956.

51. Duration of licences.—A licence shall, unless soon suspended or cancelled, be in force for such period as the State Government may prescribe :

Provided that if application for a fresh licence is made before the expiry of the period of validity of the licence, the licence shall continue to be in force until orders are passed on the application.

5. Conditions—Meaning Explained : The word "conditions" embraces a multitude of things. It may range over such matters as storing, packing, temperature, standard of purity, physical condition and chemical condition (a).

6. Punishment for contravention of the provisions of Section 5 : Contravention of the provisions of Sec. 5 renders the persons guilty liable to the following punishments :

(a) under section 16 (1) (a) ;

(b) under the Sea Customs Act of 1878 (VIII of 1878) read with Sec. 6 of the Central Act.

Sec. 16 (1) (a) :—If any person whether by himself or by any person on his behalf imports into India any article of food in contravention of any other provisions of this Act or of any rule made under this Act, he shall in addition to the penalty to which he may be liable under the provisions of Sec. 6 be punishable ;

(i) for the first offence, with imprisonment for a term which may extend to one year, or with fine which may extend to two thousand rupees, or with both ;

(ii) for a second offence with imprisonment for term which may extend to two years and with fine,

Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgement of the court, such imprisonment shall not be less than one year and such fine shall not be less than two thousand rupees ;

(iii) for a third and subsequent offences, with imprisonment for a term which may extend to four years and with fine :

Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the court, such imprisonment shall not be less than two years and such fine shall not be less than three thousand rupees.

(a) Nauranga Lal V. Midnapore Municipality A.I.R. 1940 Cal. 324=44 C.W.N. 615=I.L.R. 1940—2 C. 82=190 I.C. 186=41 Cr. L.J. 849.

Section 16 (2) If any person convicted of an offence under this Act commits a like offence afterwards it shall be lawful for the court before which the second or subsequent conviction takes place to cause the offender's name and place of residence, the offence and the penalty imposed to be published at the offender's expense in such news papers or in such other manner as the court may direct. The expenses of such publication shall be deemed to be part of the cost attending the conviction and shall be recoverable in the same manner as a fine.

7. Only licence holder punishable for breach of conditions of licence and not his munim, agent etc. : It is only the licence holder who can be penalized if he commits any offence under the Act in breach of the conditions of licence. Any other person, whatever his relation to the licence holder may be cannot be punished for the reason that the rules in question concerning the licence do not cast any duty on him. Hence a person who in the service of the licence holder as a munim or agent cannot be punished (b).

8. Law relating to penalty under the Sea Customs Act for contravention of the provisions of Section 5, :—The law relating to penalty under Sea Customs Act for breach of the provisions of Section. 5 of the Prevention of Food Adulteration Act is given in Sec. 6 of the Central Act which is reproduced below :

Sec. 6. Application of law relating to Sea customs and powers of Custom Officers :—(1) The Law for the time being in force relating to sea customs and to goods, the import of which is prohibited by section 18 of the Sea Customs Act 1884 (VIII of 1878) shall, subject to the provisions of section 16 of this Act, apply in respect of articles of food, the import of which is prohibited under Sec 5 of this Act, and officers of customs and officers empowered under that Act to perform the duties imposed thereby on a Customs Collector and other officers of Customs shall have the same powers in respect of such articles of food as they have for the time being in respect of such goods as aforesaid.

(2) Without prejudice to the provisions of sub-section (1) the Customs Collector, or any officer of the Government authorised by the Central Government in this behalf, may detain any imported package which he suspects to contain any article of food the import of which is prohibited under section 5 of this Act and shall forthwith report such detention to the Director of the Central Food Laboratory and if required by him, forward the package or send

(b) Murari Lal V. Emperor A.I.R. 1940 All. 3=1939 A.L.J. 1037=1939 A.W.R. 791=185 I.C. 799=41 Cr. J. 236.

samples of any suspected article of food found therein to the said Laboratory.

Under Section 6 (1) the law for the time being in force relating to Sea Customs and to goods, the import of which is prohibited by Section 18 of the Sea Customs Act of 1878 (VIII of 1878) and subject to the provisions of Section 16 of the Prevention of Food Adulteration Act has been applied in respect of articles of food, the import of which is prohibited under Sec. 5 of the Prevention of Food Adulteration Act, and the officers of customs and officers empowered under that Act to perform the duties imposed thereby on a Custom Collector and other officers of customs are given the same powers in respect of such articles of food of which the import is prohibited under Sec. 5 as they have for the time being in respect of such goods as aforesaid.

Under the Sea Customs Act of 1878 with respect to goods of which import is prohibited in India by Sec. 18 (Chapter IV) the Customs Officers under Section 19 (A) are given the powers of detention and confiscation of the goods to be exercised in the manner and subject to the conditions mentioned in section 19 (A) which runs as follows :—

19—A. (1) Before detaining any such goods as are or may be specified in or under section 18 or section 19, as the case may be, or taking any further proceeding with a view to the confiscation thereof under this Act, the Chief Customs Officer or other officer appointed by the (Chief Customs-authority) in this behalf may require the regulations under this section, whether as to information, security, conditions or other matters, to be complied with, and may satisfy himself in accordance with those regulations that the goods are such as are prohibited to be imported.

(2) The Central Government may make regulations, either general or special, respecting the detention and confiscation of goods the importation of which is prohibited, and the conditions, if any to be fulfilled before such detention and confiscation, and may by such regulations determine the information, notices and security to be given, and the evidence requisite for any of the purposes of this section and the mode of verification of such evidence.

(3) Where there is on any goods a name which is incidental with, or a colourable imitation of, the name of a place in the United Kingdom, (India) or (Burma), that name, unless accompanied in equally large and conspicuous letters, and (in the English language), by the name of the country in which such place is situate, shall

be treated for the purposes of sections 18 and 19 as if it were the name of a place in the United Kingdom, (India) or (Burma).

(4) Such regulations may apply to all goods the importation of which is prohibited by section 18 or under section 19, or different regulations may be made respecting different classes of such goods or of offences in relation to such goods.

(5) The regulations may provide for the informant reimbursing any public officer and the (Central Government) all expenses and damages incurred in respect of any detention made on his information, and of any proceedings consequent on such detention.

(6) All regulations under this section shall be published in the Gazette of India, and with the consent of the (State) Government concerned, in the Official Gazette of each (State)

Besides the powers of detention and confiscation conferred on the said Customs Officers under section 19 (A) read with Sec. 6 (1) above the Customs Officer can impose penalty also for contravention of the provisions of Sec. 5 as provided in Sec. 167 of the Sea Customs Act which is reproduced below :

167. The offences mentioned in first column of the following schedule shall be punishable to the extent mentioned in the third column of the same with reference to such offences respectively :

Offences	Section of this Act to which offence has reference.	Penalties
8. If any goods, the importation or exportation of which is for the time being prohibited or restricted by or under Chapter IV of this Act, be imported into or exported from India contrary to such prohibition or restriction ; or if any attempt be made so to import or export any such goods or if any such goods be found in any package produced to any officer of Customs as containing no such goods ; or	18 & 19	such goods shall be liable to confiscation ; any person concerned in any such offence shall be liable to penalty not exceeding three times the value of the goods or not exceeding one thousand rupees.

if any such goods, or any dutiable goods, be found either before or after landing or shipment to have been concealed in any manner on board of any vessel within the limits of any port in India ; or if any goods, the exportation of which is prohibited or restricted as aforesaid, be brought to any where in order to be put on board of any vessel for exportation contrary to such prohibition or restriction.

Under Sec. 6 (2) of the Prevention of Food Adulteration Act, further powers have been given to the Customs Collector or any officer of the Government authorised by the Central Government in this behalf, to detain any imported package which he suspects to contain any article of food the import of which is prohibited under section 5 of this Act and who shall forthwith report such detention to the Director of the Central Food Laboratory and if required by him forward the package or send samples of any suspected article of food found therein to the said Laboratory.

9. Interpretation of the penalty clause under Sec. 167 (8) of the Sea Customs Act 1878 : The question whether penalty can be imposed exceeding the amount of Rs. 1000/- in case the three times value of the article prohibited exceeds Rs. 1000/- was decided recently in the following judgements :—

(i) As a matter of plain construction of the section, the Legislature conferred upon the Customs Officer an option when exercising his power of imposing a penalty. Item 8 confers jurisdiction upon the appropriate authority to impose a fine which may either be regulated by value of the goods, in which case it must not exceed three times its value, or it may be regulated by a liquidated amount, in which case it must not exceed Rs. 1000/- and if the order of penalty satisfied either of these two conditions then the order is valid ; though the goods may be worth a rupee or two. In such cases, if the only penalty which the officer could impose was a penalty not exceeding three times the value of the goods, then his power to impose a penalty would be of a very small amount. In such a case, the officer could fall back upon the latter part of the item and impose a penalty on the person contravening Ss. 18 and 19 in a sum not exceeding Rs. 1000/- ; or there may be a case where it would be difficult, if not impossible, to value the goods, in which case also the officer could exercise his power under the latter part

of the item. The Court, cannot read, in item 8 words to this effect : "shall be liable to a penalty not exceeding three times the value of the goods or not exceeding Rs. 1000/- which ever is less". The effect of the words used by the legislature is perfectly clear. Cr. Revision 1203 of 1955 dated 14-12-57 (Bom approved and held not overruled by A. I. R. 1953 S. C. 325 as the observations in the latter decisions could not be regarded as even having the effect of an obiter dicta of the Supreme Court] (a).

The amount of Rs. 1000/- is not the maximum limit of the penalty which can be imposed by the Customs Authorities. The word 'or' makes it perfectly clear that the Customs Authorities are given the alternative and it is left to them to impose a penalty which satisfied either the first condition or the second condition. Therefore, if a penalty does not exceed three times the value of the goods, it is penalty which in law can be inflicted by the Customs Authorities although that penalty may exceed Rs. 1000/-. On the other hand, it would be open to the Customs Authorities, to fall back upon the second alternative and impose a penalty which may not exceed Rs. 1000/- ; that penalty would be irrespective of the value of the goods (b).

10. Necessity and scope of enquiry for order under section 167 (8) Sea Customs Act : Order of confiscation or penalty under Sea Customs Act passed without notice and enquiry—Order contravenes principles of natural justice (c).

11. Whether a confessional statement made before a Customs Officer under Sea Customs Act is hit by Sec. 25 of the evidence Act : According to the provisions of the Sea Customs Act, Customs Officers have powers analogous to police powers relating to prevention or detection of crimes even though those powers fall short of powers of investigation. The power of investigation is not the real or governing test for the application of section 25 of the Indian Evidence Act.

Held, therefore, that a confessional statement made before a Customs Officer is hit by the provisions of section 25 of the Evidence Act and is not admissible in evidence (d).

(a) Mohan Das Isardas Vs. Sattanathan—I.L.R. (1955) Bom. 318=A.I.R. 1955 Bom, 113=56 Bom. L. R. 115=1955 Cr. L. J. 423.

(b) Collector of Customs, Madras Vs. A.H.A. Rahiman—70 Mad. L.W. 328=(1957) Mad. L. J. (Cr.) 283=(1957) 2 Mad. L. J. 41=A.I.R. 1957 Mad. 496=I.L.R. (1957) (Madras 644. (A.I.R. 1955 Bom. 113 followed: A.I.R. 1953 S. C. 325=1957 S.C.J. 456=(1953) 2 M. L. J. 113. Expl.)

(c) Collector of Customs Madras V. A.H.A. Rahiman—A.I.R. 1957 Mad. 496=(1957) 2 Mad. L.J. 41

(d) Galpal Dass V. the State 1958 P.L.R. 643.

SECTION 6,

6. Application of law relating to Sea Customs and powers of Customs Officers. (1) The law for the time being in force relating to Sea Customs and to goods, the import of which is prohibited by Sec. 18 of the Sea Customs Act, 1878 (VIII of 1878) shall, subject to the provisions of Sec. 16 of this Act, apply in respect of articles of food, the import of which is prohibited under Sec. 5 of this Act, and officers of Customs and officers empowered under that Act to perform the duties imposed thereby on a Customs Collector and other officers of Customs shall have the same powers in respect of such articles of food as they have for the time being in respect of such goods as aforesaid.

(2) Without prejudice to the provisions of subsection (1) the Customs Collector, or any officer of the Government authorized by the Central Government in this behalf, may detain any imported package which he suspects to contain any article of food the import of which is prohibited under Sec. 5 of this Act and shall forthwith report such detention to the Director of the Central Food Laboratory and, if required by him, forward the package or send samples of any suspected article of food found therein to the said laboratory.

SYNOPSIS

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| 1. Section explained and analysed. | read with sec. 16 of the Act, |
| 2. Punishments and penalties to which the offender under sec. 6 | sec. 19(A) and sec. 167 (8) of the Sea Customs Act 1878. |

COMMENTARY.

1. Section explained and analysed

- (I) (a) Subject to the provisions of Sec. 16 of this Act, the law for the time being in force relating to Sea Customs and to goods, the import of which is prohibited by Sec. 18 of the Sea Customs Act, 1878 (VIII of 1878), shall apply in respect of articles of food, the import of which is prohibited under

Sec. 5 of this Act; and

- (b) Officers of customs and officers empowered under this Act (Sea Customs Act, 1878) to perform the duties imposed thereby on the Customs Collector and other officers of customs shall have the same powers in respect of such articles of food (of which import is prohibited under sec. 5) as they have for the time being in respect of such goods as aforesaid (i.e. the import of which is prohibited under sec. 18 of the Sea Customs Act, 1878).
- (II) Without prejudice to the provisions of sub-section (1) (a), the Customs Collector, or any officer of the Government authorised by the Central Government in this behalf
 - (i) may detain any imported package which he suspects to contain any article of food the import of which is prohibited under Sec. 5 of this Act.
 - (ii) and shall forthwith report such detention to the Director of the Central Food Laboratory.
 - (iii) and if required by him, forward the package or send samples of any suspected article of food found therein to the said Laboratory.

2. Punishment and penalties to which the offender under Sec. 6 read with Sec. 16 of this Act and Sec. 19(A) and Sec. 167 (8) of the Sea Customs Act, 1878 is liable: Under this Section the person importing into India any article of food in contravention of the provisions of Section 5 is liable to the following punishment and penalties :—

(1) (A) Under Sec. 16(1)(a)

- (i) for the first offence, with imprisonment for a term which may extend to one year, or with fine which may extend to two thousand rupees, or with both;
- (ii) for a second offence with imprisonment for a term which may extend to two years and with fine: Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgement of the court, such imprisonment shall not be less than one year and such fine shall not be less than two thousand rupees;
- (iii) for a third and subsequent offences, with imprisonment for a term which may extend to four years and with fine:

Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgement of the court, such imprisonment shall not be less than two years and such fine shall not be less than three thousand rupees.

- (B) In case the offender is already convicted of the said offence, commits a like offence it shall be lawful for the court before which the second or subsequent conviction takes place to cause the offender's name and place of residence, the offence and the penalty imposed to be published at the offender's expenses in such newspapers or in such other manner as the court may direct. The expenses of such publication shall be deemed to be part of the costs attending the conviction and shall be recoverable in the same manner as a fine.
- (C) According to Section 16 the offender shall also be liable to the penalties :—
- (i) under the provisions of section 6 of the Act according to sub-section (1) of which he is liable to the penalties of detention and confiscation of goods by the custom's authorities as provided in Sec. 19(A) of the Sea Customs Act ;
 - (ii) to the further penalties as provided in section 167 (8) of the Sea Customs Act.

(2) Under Sec. 18 of this Act the article of food in respect of which any person has been convicted for the contravention of any of the provisions of this Act or of any rule thereunder, may be forfeited to the Government.

Note :— For further commentaries under this section see Commentaries under Sec. 5 of this Act.

SECTION 7.

7. Prohibition of manufacture, sale, etc. of certain articles of food :— No person shall himself or by any person on his behalf manufacture for sale, or store, sell or distribute—

- (i) any adulterated food ;
- (ii) any misbranded food ;
- (iii) any article of food for the sale of which a license is prescribed, except in accordance

- with the conditions of the license ;
- (iv) any article of food the sale of which is for the time being prohibited by the Food (Health) Authority with a view to preventing the outbreak or spread of infectious diseases ; or
- (v) any article of food in contravention of any other provision of this Act or of any rule made thereunder.

S Y N O P S I S

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| 1. Section explained and analysed. | 9. Liability of the manager of a mill |
| 2. Person. | 10. Brother-in-law selling adulterated ghee at the shop of the accused—liability. |
| 3. Whether person includes a child under this Act." | 11. Manufacture for sale, |
| 4. No person shall himself or by any person on his behalf. | 12. Storing for sale. |
| 5. Joint Hindu Family—Liability. | 13. Possession in case of storing for sale must be actual. |
| 6. Master & servant—their liability. | 14. Sell. |
| 7. Principal & Commission agent or Arhati—their liability. | 15. Distribute. |
| 8. Firm—its partners—their liability for the acts of their servants. | 16. Adulterated food. |
| | 17. Misbranded. |
| | 18. Section 7 (v). Sale etc, of an article of food in contravention of any rule made under the Act. |

COMMENTARY

1. Section explained and analysed :—Under this Section no person can himself or by any person on his behalf—

- i. Manufacture for sale
- ii. store for sale
- iii. sell, or
- iv. distribute

(a) any adulterated food :

(b) any mis-branded food ;

(c) any article of food for the sale of which a license is prescribed without obtaining a license and in case

licence is obtained, except in accordance with the conditions of the licence.

- (d) any article of food the sale of which is for the time being prohibited by the Food (Health) Authority with a view to preventing the out-break or spread of infectious diseases ; or
- (e) any article of food in contravention of any other provision of this Act or of any rule made thereunder.

2. Person : See Commentary under Sec. 5.

3. Whether person includes a child under this Act : Under Sec. 82 of the Indian Penal Code nothing is an offence which is done by a child under seven years of age. This being a general section will apply to offences not only under the I. P. C. but also to offences under any special or local Act. Similar would be the case of a child covered by Sec. 83 I. P. C. under which "nothing is an offence which is done by a child above seven years of age and under twelve who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion. According to Sec. 40 I. P. C. these exemptions provided in Sec. 82 and 83 I. P. C. would apply to offences under special law as defined in Sec. 41 I. P. C. and this Prevention of Food Adulteration Act is Special Law within the meaning of Section 41 I. P. C.

4. No person shall himself or by any person on his behalf: These words are very wide. Under this Section read with Sec. 17 no person can manufacture etc. himself or on his behalf or on behalf of another either as commission agent or as partner of a firm or as manager or member of a joint Hindu family or joint Hindu family firm or as a relation or servant or as a director or manager or incharge of or responsible to the company for the conduct of its business provided that in the case of a company no person shall be liable to punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence

Notwithstanding any thing contained above where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. In case of individual vendors under Sec. 19 a vendor shall not be deemed to have committed an offence if he proves —

- (i) that the article of food was purchased by him as the same in nature, substance and quality as that demanded by the purchaser and with a written warranty in the prescribed form, if any, to the effect that it was of such nature, substance and quality ;
- (ii) that he had no reason to believe at the time when he sold it that the food was not of such nature, substance and quality : and
- (iii) that he sold it in the same state as he purchased it ;

Provided that such a defence shall be open to the vendor only if he has submitted to the food inspector or the local authority a copy of the warranty with a written notice stating that he intends to rely on it and specifying the name and address of the person from whom he received it, and has also sent a like notice of his intention to that person :

Provided further that the warranty given by a person resident in any area in which this Act is not in force, shall be a defence to the vendor only if the vendor proves to the satisfaction of the court that he had taken reasonable steps to ascertain and did in fact believe in the accuracy of the statement contained in the warranty.

(3) Any person by whom a warranty as is referred to in sub-section (2) is alleged to have been given shall be entitled to appear at the hearing and give evidence.

As to the liability of a commission agent, partner etc, the subject is dealt with hereafter under various headings in the light of relevant case law.

5. Joint Hindu Family—Liability : An accused was working on the shop on behalf of his father. On information received by the Health Inspector he inspected the house and the shop of the accused and his father, on finding the accused there he asked him to keep open the godown and found there smooth pea flour. The Health Inspector took samples of the same and the same were found to be adulterated. The accused was held liable as a person who is working in the shop on behalf of the owner as his employee and so is certainly one who will come within the meaning of the person offering for sale the article exhibited there. The accused must have been in the shop for the purpose of carrying on sale on behalf of his father and as his servant. It has been laid down in a long line of decisions the most notable of which is the English decision of *Sherras Vs De Rutzen* [(1895) 1 Q. B 918 at page 921,] in which Wright Judge has collected and classified the interesting English decisions on the subject and the supreme decision in *A. I. R. 1951 S. C. 204*. The entire case law on the subject has been set out in *Kasi Ragh V. State A. I. R. 1953 Mad. 156* [see also *Barker V. Levinson* (Goddard C J.)] as servant

is equally liable because if the law were otherwise every master would try to keep himself out of the way and escape liability (a).

(2) When A was charged for selling adulterated ghee and the shop wherein the ghee was exposed for sale belonged to his brother B and both of them were members of a joint Hindu family. When the ghee was sold A was in the shop only in the absence of his brother B and acted as his deputy. It was not suggested that A was there only as a casual visitor or that he did not go there for the purpose of looking after business. Held, that A should be considered the person who offered the ghee for sale and had in his possession the article which did not confirm to definition of the ghee as given in the Act. A therefore was guilty (b).

6. Master and servant—their liability : 1. It is quite true that as a general rule of criminal law the master is not responsible for the unauthorised acts of his servants. But in many cases the law imposes upon the owner of the property, the obligation of managing it, so that it shall not injuriously affect any one else or the public, or requires or forbids dealing with it in some particular way. In such cases, where the breach of obligation is punishable criminally, the owner cannot free himself from liability by delegating the management to some one else on his behalf. This liability of the master is insisted upon because otherwise every master will be able to set at naught the entire series of special Acts by employing servants AD HOC and getting illegal acts done and at the same time disown his liability therefor and would take care always to be out of the way.

The true test is, to look at the object of each Act that is under consideration, to see how far knowledge is of the essence of the offence created. In arriving at the decision, it has been held material to enquire ; (1) whether the object of the statute would be frustrated, if proof of such knowledge was necessary ; (2) whether there is anything in the wording of the particular section which implies knowledge ; (3) whether there is any thing in other sections showing that knowledge is an element in the offence, which is omitted or referred to in the section under discussion. These tests have been applied in cases arising under the Licence Laws and other special enactments.

The accused as owner of a rice mill was prosecuted under S 7 (1) of the Essential Supplies Temporary Power Acts 1946, for contravention of Govt. Order, 432, Food Department, dated 12-4-47 by which hulling of paddy by the owner or a person

(a). Public Prosecutor V. Pattu Narasimhulu A.I.R. 1953 Mad. 697= (1953) 1 M.L.J. 475=1953 Mad. W.N. 232=1953 Cr. L.J. 1220.

(b). Public Prosecutor Vs. Kupendra—A.I.R. 1948 Mad. 478=1948 1 M.L.J. 491=61 M.L.W. 400=1948 M.W.N. 412.

incharge of the mill without a permit was made punishable. On a certain night at 2-30 A.M. a surprise raid was made on the rice mill belonging to the accused. The engine driver who was the person incharge of machine was caught red-handed while hulling paddy without permit. The owner who was living in the same village not far away was absent.

Held that in the circumstances of the case and in terms of the particular enactment which the accused had violated, the master was liable for the acts of his servant notwithstanding the plea that he might put forward that as the acts were done without his knowledge he had no mens rea. (a)

2. The question of liability of the master for the acts of his servant arose in a recent judgment of the Supreme Court under the Motor Spirit Rationing Order (1941) clause 27 (A) and it was held that clause 27 (A) throws the responsibility for making the necessary endorsement on the supplier. If Cl. 27 (A) is contravened, a person who comes within the definition, of the word 'supplier' must be held guilty of the contravention. The object of this clause clearly is that the supplier of petrol should set up a complete machinery to ensure that the necessary endorsements are made on the coupons against which petrol is supplied. It is conceivable that in many cases the default will be committed by the servants of the supplier, who were incharge of the petrol pump, but that fact by itself will not exonerate the supplier from liability. (b).

3. Where it is proved that a person was selling adulterated food only on behalf of the master, both seller, the servant as well as the person on whose behalf the food was sold viz the master are liable under Sec. 7 of the Prevention of Food Adulteration Act (c)

4. Not only the master or the owner of the adulterated article sold is liable but also the servant or the agent who sells such an article is also liable. (d).

No doubt only a master or principal is a person who has choice of selling himself or by any other person on his behalf. But the agent or servant is within the prohibition of the words "no

(a). In re Kasi Raja—A.I.R. 1953 Mad. 156=(1952) 2 M.L.J. 848=1953 Cr. L.J. 369=1952 Mad. W.N. 965 (2).

(b) Hari prasada Rao Vs. The State—A.I.R. 1951 S.C. 204=1951 A.L.J. S.C. 55 =1951 M.W.N. 374=1951 S.E.J. 286=1951 M.W.N. (Cr.) 102= 1951 1 M.L.J. 612=1951 S. Cr. 322=64 M.L.W. 493=52 Cr. L.J. 768.

(c). Public Prosecutor Vs. Lourduswami—A.I.R. 1957 Mad. 631=1957 Cr. L.J. 1148=1957 Ker. L.T. 936=1957-1 Mad. L.J. (Cr) 512.

(d). Peary Mohan Vs. Harendra Nath—A.I.R. 1930 Cal. 295=44 C.W.N. 144=125 I.C. 660=31 Cr.L.J. 997=57 Cal. 1014=1930 Cr. C. 383.

person shall sell)". The legislature is not necessarily contemplating a person who has a choice to sell at his own hand or by any other person on his behalf. It is concerned to make the act of selling, an act which is imputable both to the person with whose hands it is committed and to any other person if such there be, on whose behalf it is committed (e).

5. Where ghee was stored by a hotel keeper; his servant cannot be said to have stored ghee for sale and his conviction is unsustainable (f).

6. The word "any person" includes also the employee, the person who performs the physical act of transferring the adulterated thing to purchaser, admits of no doubt. But the employer is also responsible for the act of his servant in exposing for sale or selling adulterated food. [Here adulterated mustard oil was sold pure mustard oil] (g).

7. A servant employed by his master to sell any article who adulterates it thereby renders the master liable although there is no connivance of the master. Non connivance of the master is no defence, though the entire absence of connivance on his part may in the discretion of the convicting Magistrate, be a ground for mitigation of the penalty (h).

8. A person who sells adulterated mustered oil, whether he is the owner of the shop or merely a servant, is guilty. When a man does a prohibited act, the question of "mens rea" does not arise and the presumption is that he did it with bad faith unless he could explain to the satisfaction of the Court that he did it under good faith (i). Under Section 19 he is required to prove something more also.

9. A was owner of a shop where he kept and offered ghee for sale. B was working in that shop and his duty was to sell the ghee to the customers. The Sanitary Inspector entered the shop and demanded a sample from B who was then selling articles in his master's absence. The sample was found to be adulterated and both the accused were prosecuted :

(e). Do: (Brown Vs. Foot (1892) 66 L.J. 649, Hotchin Vs. Hindmarsh (1899) 2 Q.B. 181 ref.)

(f). In re Ananthanarvana Iyer - A.I.R. 1941 Mad. 320=52 M.L.W. 893=1940 M.W.N. 1242=42 Cr. L.J. 330=192 I.C. 817=1940 M. Cr.C. 255.

(g). Brijmohan das Vs Emperor--A.I.R. 1948 All 177=1948 A.L.J. 1=I.L.R. (1948) All. A 134,=49 Cr. L.J. 175=1948 O.W.N. 61. (1892) 17 Cox. C.C. 509, (1899) I Q.B. 20, 39 Cal. 682 & (1891) 2 Q.B. 211 rel)

(h). Sewkaran Vs, Corporation of Calcutta—39 Cal. 682=14 I.C. 205 (Brown Vs. Foot, 17 Cox C.C. 509,61 L.J. M.C. 110, 60 L.T. 649, 56 J.P. 581 foll).

(i). Maherali Vs, Gauhati Municipality - A.I.R. 1955 N.U.C. (Assam) 2854.

Held that (1) in displaying the ghee in a shop A was offering it for sale (2) since the offering of ghee for sale was done by A, and B had no right to interfere with anything that his master had done or to remove from the shop any articles that his master has placed there for sale and did nothing to make the offer of ghee for sale more attractive, B could not be said to have offered ghee for sale (3) nor could B be said to be guilty of selling the ghee (j).

*Note:—*The ruling 1942 Madras 609 has been explained and distinguished in A.I.R. 1944 Madras 236 on the ground that in that particular case, there was no proof of sale and the evidence disclosed that the Sanitary Inspector seized a part of the milk and sent to the Analyst and so the accused could not be found guilty as there was no evidence of sale.

9. Employer purchasing butter with letter of Warranty-Butter to be washed and water drained on return of seller-Butter till then kept in employer's shop but not for sale in absence of employer, employee selling butter to Sanitary Inspector-Butter found adulterated, Employer who had used due diligence to enforce execution of Act, held not guilty-Employee held properly convicted (k).

(10) Where a master has not resorted to the third party procedure open to him under section 6 (3) of the Madras Prevention of Adulteration Act, 1918, he must be attributed with the knowledge of his servant whom he has put in his place so as to represent him for the purpose of acquiring such knowledge. In such a case upon evidence being given of the commission of the forbidden act by the master, the servant is liable(l).

7. Principal and Commission Agent or Arhati their liability : 1. Once a commission agent receives for sale or has in his possession for sale or exposes for sale or sends or delivers for sale or causes or allows to be sold, offers or exposes for sale, ghee, which is proved to be adulterated he commits an offence under the Act. The definition of "sale" is very widely worded. It covers not only actual sale but almost any transaction which a seller, be he a retailer or commission agent undertakes provided only that the

(j) In re Bellemkonda Kanakayya—A.I.R. 1942 Mad. 609=43 Cr. L.J. 363=202 I.C. 607=55 M.L.W. 464=1942-22 M.L.J. 172=1942 M.W.N. 439.

(k) Public Prosecutor Vs. Annamalai—A.I.R. 1953 Mad. 862=(1953) 1 M.L.J. 593=1953 Mad. W.N. 395=1953 Cr. L.J. 1639.

(l) Public Prosecutor Vs. K. Narayanasway Reddy (1956) 1 M.L.J. 431.

ghee is intended "for sale for human consumption or use" (m).

Note : This judgment though under the Punjab Pure Food Act will apply to a case under the present Act.

2. A was a seller who sold his goods at B's shop. B. was to get commission on the sale price. The sale price included the commission to be charged by B. To the extent of the commission, therefore, B was interested in the sale and so he could be said to have taken part in the sale when the goods were sold in his presence. Goods sold by A were found to be adulterated. It was held, that B was also liable and whether A was present or not at the time when the goods were sold at B's shop, did not lessen any way B's liability as a seller(n).

3. R was a shopkeeper and a commission agent. People used to bring ghee to his shop and sell through him, R being entitled to commission over that. One D brought some ghee to the shop which was sold to the Inspector by this D at R's shop. On analysis the ghee was found to be adulterated and so both R and D were tried and convicted. It was contended by R that he was only a shop keeper and it was D who sold the impure ghee to the Sub Inspector and as such he was not liable : Held that Sec. 4 (1) U.P. Prevention of Adulteration Act penalises the selling or offering or exposing for sale etc. although the actual selling may have been done by D, the exposing for sale was done by R because the shop belonged to R and goods could not have been exposed for sale in that shop without his consent; so R was liable (n). The same is the position under the present Central Act.

R was liable also on the ground of abetment. Sec. 40 I.P.C. in para 2 provides that the word "offence" in Sec. 109 denotes a thing punishable under any special or local law as well as a thing punishable under the I.P.C. The law of abetment, will therefore apply to Sec. 4 U.P. Prevention of Adulteration Act, 6 of 1912 (on the same ground it will apply to offences under the present Central Act). As there is no express provision for the abetment of this offence, the penalty therefore is the same as the penalty for the offence. Under Section 107 I.P.C. abetment is constituted by intentional aiding of any act or illegal omission to do a thing and so it is clear that it would not have been possible for D to have exposed the ghee for sale or to have sold it if R had not agreed to his doing so at his shop. Therefore it is clear, that R abetted the offence and is so guilty of abetment (o).

(m). Emperor Vs. Prem Singh A.I.R. 1944 Lah. 420=I.L.R. 1944 Lah. 240=216 I.C 190.

(n). Emperor Vs. Ram Gopal—A.I.R. 1936 All. 864=1936 A.W.R. 875=1936 A.L.J. 1037=1936 Cr. C. 1107=1937 All. L.R. 64.

(o). Municipal Poard Barilly Vs. Ram Gopal—A.I.R. 1940 All. 517=1940 A.L.J. 653=1940 A.W.R. 482=I.L.R 1940 All. 643.

4. A person who does not himself sell the ghee on behalf of the owner, but allows the owner to sell it. On the premises of his shop, the consideration for such license being a commission fixed by reference to a percentage of the sale price, cannot be said to be actually taking part in the sale in the absence of evidence that he exercised any control over the vendor or had any property or other interest in the ghee sold by the vendor. The person is a mere licensor of a right to sell ghee on premises. If however such person allows another to offer ghee for sale at his shop and in his presence and with profit to himself he must be deemed to be exposing the ghee for sale equally and jointly with the owner of the ghee, i.e. the vendor. (e).

8. **Firm—its partner—their liability for the acts of their servants :** 1. Where the servant of a firm consisting of four partners has sold ghee, that was not genuine, a partner, who does not sit in the shop and actually carry on business himself is not liable to criminal prosecution. (a)

2. "The conditions of the mind of a servant or agent is not imputed to the master or principal so as to make him criminally liable merely because his servant or agent commits a negligent or malicious or fraudulent act. But in the limited class of cases where a particular intent or state of mind is not of the essence of the offence, the acts or defaults of a servant or agent in the ordinary course of employment may make the master or principal criminally liable, although he was not aware of such acts or defaults, and even where they were against his order" (b)

3. Atkin Judge, (now Lord Atkin) in a case (c) made the following most valuable observations :—"I think that the authority cited by my Lord make it plain that while prima facie a principal is not to be made criminally responsible for the acts of his servant, yet the legislature may prohibit an act or enforce a duty in such words as to make the prohibition or the duty absolute; in which case the principal is liable if the act in fact is done by his servants. To ascertain that whether a particular Act of Parliament has that effect or not, regard must be had to the object of the statute, the words used, the nature of the duty laid down the person upon whom it is imposed, the person by which it would in ordinary circumstances be performed, and the person upon whom the penalty is imposed".

4 A proprietor of a shop is liable for the sale of adulterated stuff sold in his shop, although such proprietor is only a sleeping

(a). Ramchand Ram Vs. Gaya Municipality—A.I.R. 1945 Patna 264=26 P.L.T. 17=11 B.R. 462=46 Cr. L.J. 655=220 I.C. 95.

(b). Halsbury's Laws of England 2nd Edition. Vol. 9, page 13.

(c). Mousell Brothers, Ltd. Vs. L & N.W. Ry. Co, (1917) 2 K.B. 836.

partner, the reason being that it is not only the actual salesman who is responsible and who can be convicted under the Act for sale of adulterated food (*d*).

9. Liability of the Manager of a Mill : A manager of a mill which manufactures or stores for sale adulterated mustard oil comes within the very wide terms of Sec. 9 (2) of the Behar Prevention of Food Adulteration Act, (5 of 1948) of which the material portion is as follows :—

“No person shall, directly or indirectly, himself, or by any other person on his behalf, sell, or expose for sale or manufacture or store for sale mustard oil unless it is exclusively derived from mustard seeds” (*e*) The same would be the position under Sec. 7 of the Central Act which is equally very wide.

10. Brother-in-law selling adulterated ghee on the shop of the accused — liability : Accused owning shop—his brother in-law selling there adulterated ghee. Held, charge against the accused established. Acquittal illegal. (*f*).

11. Manufacture for sale : Manufacture of an article of food means its preparation by use of some art. The prosecution has to establish that the prohibited article of food was manufactured or got manufactured by the accused and that it was so done for sale. Mere manufacture of a prohibited article of food or possession of the same is not sufficient for the conviction of the accused (*g*).

The mere possession of adulterated milk does not constitute by itself an offence and there is no scope for an inference in the mere manufacture or possession that such possession or manufacture was for the purpose of sale. In order that any presumption might be drawn against the accused it must first be established that he was in the habit of manufacturing or storing like article for sale (*h*).

Where food described as ghee which is not of the nature, substance or quality which it purports to be or is represented to be stored in a shop, no doubt it may be presumed to have been kept for sale. But the presumption is rebuttable and is rebutted when it is shown that the ghee was not kept for sale; but for being tested

(d). Gobindram Vs. Karachi Municipal Corporation A.I.R. 1938 Sind 118=178 I.C. 119=40 Cr. L.J. 7 (Brown Vs. Foot (1892) 66 L.T. 649=61 L.J.M.C. 110=17 Cox. C.C. 509=56 J.P. 581 Relupon),

(e) Devabrata Ganguli Vs. The State of Behar—A.I.R. 1950 Pat. 301=51 Cr. L.J. 1136.=5 D.L.R. Pat. 125=4 A.I. Cr. D 332.

(f). Municipal Prosecutor, Calicut Vs. M. Abu Bakker 1933 M.W.N. 428.

(g). Bnarsi Das Vs. Emperor A.I.R. 1930 All. 595=1930 A.L.J. 911=1930 Cr. C. 317=121 I.C. 503=31 Cr. L.J. 866.

(h). Public Prosecutor Vs. Arjuna Rao A.I.R. 1947 Mad. 374=1947 M.W.N. 229=1947—1 M.L.J. 327=60 M.L.W. 309.

and where there is no evidence that the ghee was offered for sale, the shopkeeper cannot be found to be guilty of any offence (i).

Ghee alleged to be adulterated taken from a shop where sweetmeats and pikoras were offered for sale and indeed from a frying pan in which other sweetmeats and pikoras were being made. A presumption would arise that the sweetmeats and pikoras were being manufactured for sale as containing pure ghee which really contained impure ghee (j).

The fact that a merchant mixes inferior oils with superior oil necessarily leads to the conclusion that it is the intention of the merchant to sell the mixture as superior oil; the proportion of mixture is immaterial (k).

12. Storing for sale : The prosecution has to establish that the prohibited article of food in question was stored by the accused and that it was done so by him for the purpose of sale. Where the storing is in the house of the accused there is no presumption that it was stored there for the purpose of sale and the purpose has to be established by the prosecution. While where the storing is in a shop the presumption is that the storing was for the purpose of sale and it will be for the accused to rebut the presumption (l).

The following few judgements will further explain the storing for sale and its significance :—

1. In case of storing there is no question of actual sale and therefore there is no question of compulsory acquisition vitiating any sale. The gist of the offence is the storing itself. The purpose of the storing is that it is for future sale. Storing is storing whether the article is sold or not sold to the Sanitary Inspector (m).

2. Where a sweetmeat vendor was found in possession of adulterated ghee but was neither selling nor exposing for sale nor manufacturing nor storing for sale the ghee, samples of which had been taken by the Sanitary Inspector. Held, that he did not come within the plain reading of the section and could not, therefore, be said to have committed any offence (n).

(i). In re Srinivasa Rao. A.I.R. 1944 Mad. 477=1944-2 M.L.J. 119=1944 M.W.N. 553=215 I.C. 246=46 Cr. L.J. 67.

(j). Nebhan Das Vs. Emperor A.I.R. 1939 Sind 337=I.L.R. 1940 K 91=185 I.C. 832.

(k). Public Prosecutor Vs. Seshagiri Rao A.I.R. 1949 Mad. 155=1948 M.W.N. 484=1949-2 M.L.J. 124=50 Cr. L.J. 193. Kasim Bhai Vs. State 1956 All. 703=1956 A.L.J. 170=1956 A.W.N. (H-C) 251=1956 Cr. L.J. 1380.

(l). Public Prosecutor Vs Sammi Venkataraman A.I.R. 1958 M. 382=71 Mad. L.W. 248=1958 Mad. L.J. (Cri) 236 Dharam Deo V. State A.I.R. 1958 All. 865 (A.I.R. 1956 All. 703. Rel. on)

(m) Makhan Lal Vs. Ram Bhakatsharma—1953 Cr. L.J. 1134=A.I.R. 1953 Cal. 485.

(n). Ram Jatan Sahu Vs. Chairman Municipality. Dalton Ganj—A.I.R. 1955 N.U.C. 2489 (Patna).

3. Accused had stored for sale oil, the bulk of which was mustard oil but mixed with linseed oil. Accused chose to call that oil not mustard oil but fuel oil and alleged that he has not intended that it should be used for human consumption: Held; that what was sold was mustard oil which was an article of food and as the oil in question did not conform to the standard required, the accused was guilty. Held further: that it was not essential part of the offence that what is done should be done with a view to or for the purpose of human consumption. Mere placing of label on a canister containing some article, if in fact it can be used as an article of food will not exonerate him from conviction. (o).

13. Possession in case of storing for sale must be actual: Possession must mean actual physical possession. Mere possession of any article which is adulterated is not an offence under the Act, but from the fact of possession a presumption is to be drawn which will establish an offence. That being so, the word possession must be given a strict interpretation and cannot be extended to include constructive possession [Webb Vs. Baker (1916) 2 K.B. 753 Relied] (p). The fact that ghee is in a cart for the purpose of being carried and is not deposited in any place for the purpose of sale, in other words, that it is in transit, need not mitigate against the presumption of storing for sale. [Daly Vs. Webb, (1869) Ir R 4 C L 309 and Williams Vs. Allin, (1916) 1 K. B. 425 ref.] (p). The person against whom the presumption u/s 6 (4), Bengal Food Adulteration Act, is to be drawn must be shown to be a person who is in the habit of storing ghee for sale (p).

The accused took delivery of a consignment of tins of mustard oil at the Railway Station for the purpose of selling it. On the same day while the goods were actually on the railway premises a sample was taken from the tins by the Sanitary Inspector and it was found that the mustard oil contained therein was adulterated. The accused was subsequently prosecuted and convicted: Held that although the goods had not actually left the railway premises, they were nevertheless being stored for sale by the accused. The accused came into physical possession of consignment as soon as he took delivery thereof at the railway station and from the moment that he took such delivery until the goods were actually exposed for sale in a shop there could be no doubt that he was actually storing them with a view to their ultimate disposal by sale and consequently the requisite initial on us must be taken to have been

(o). Chaiaman District Board Vs, Atul Chandra—A.I.R. 1933 Cal. 619=37 C.W.N.511=57 C.L.J. 429=34 Cr. L.J. 1081=145 I.C, 841=1933 Cr. C. 998.

(p). Ram Charita Vs. District Board, Rajshahi—A.I.R. 1937 Cal. 710=41 C.W.N. 1213=172 I.C. 869. (Daby Vs. Webb (1869), Ir. R.C.L. 309 Williams. Vs. Allen (1916) 1 K.B. 425 Relon).

discharged by the prosecution. The fact that the accused could have had no opportunity to examine the nature of the goods between the time when he took delivery of them and the time when the sample was taken was no defence [A. I. R. 1940 Cal. 213. Dist.] (q).

The prosecution must ordinarily prove affirmatively that the adulterated food is actually being stored and such storage cannot be taken to include transit to a place of storage unless the adulterated food in question is actually in the physical possession of the person. Possession means actual physical possession and does not include constructive possession. Therefore, where adulterated mustard oil is found by the Sanitary Inspector with the accused's servant when it is merely in transit to the accused's shop, in the ordinary sense of the expression it cannot be said to be "stored for sale" and the possession of the accused being only constructive there is no presumption that he was storing for sale (r).

Two tins of ghee consigned to a firm were seized at the railway station and found adulterated. The accused was found partner in the firm. Held, the accused cannot be said to be storing ghee for sale at the Railway Station. (s).

All that the prosecution is required to establish, in order to secure a conviction is that the samples of mustard oil which were admittedly in the shop and which were admittedly sold were not derived exclusively from mustard seed. (t).

It is no defence for the accused to say that he had advertised that he was not selling pure food and that the purchasers knew this fact. The article in question being ordinarily an article of food, it is also no defence to say that these articles can be adulterated and sold in market with publication of the fact that they are adulterated (u).

14. Sell : The word sale has been defined in Sec. 2 (XIII) of the Act. See commentary under Sec. 2 (XIII).

15. Distribute : The Prevention of Food Adulteration Act is intended to protect the public from using adulterated articles and therefore, the legislature has made penal the manufacture

(q). Hari Rakshak Vs. District Board Birbhum—A.I.R. 1941 Cal. 150=44 C.W.N. 1139=72 C.L.J. 531=42 Cr. L.J. 522=194 I.C. 136.

(r). Sachi Nandan Vs. Dist. Board Midnapore A.I.R. 1940 Cal. 213=44 C.W.N.=173 I.L.R. 1940--I.C. 333=188 I.C. 398=41 Cr. L.J. 582

(s) Chairman Disttict Board V. Sreenibash A.I.R. 1941 Cal. 491=197 I.C. 68=43 Cr. L.J. 107.

(t) Sawal Ram V. Emperor A.I.R. 1934 Cal. 8581=934 Cr. C. 1372=153 I.C. 632.

(u) Rakhal Chandra V. Purna Chandra A.I.R. 1930 Cal 273=34 C.W.N. 281=51 C.L.J. 227=57 Cal. 1123=15 All. Cr. 45=127 I.C. 57=31 C. L.J. 1151=1930 Cr. C. 353.

for sale, the storing for sale, the sale itself as well as distribution of any adulterated articles of food (v). The articles of food are generally distributed on festive occasions by the people among friends, relations and even in parties and dinners etc. So the law in the public interest has made it an offence even distribution of any prohibited article of food.

16. Adulterated Food : See commentary under Sec. 2(i) (a) to (1).

17 Misbranded : The word misbranded has been defined in section 2 (IX) of the Act and the relevant rules have also been given in the commentary there under.

In order to bring the case under section 7 (ii), the prosecution has got to prove that the article seized was an imitation of, or is, a substitute for, or that it resembled in a manner likely to deceive another article of food under the name of which it was sold, When there is absolutely no evidence to show that the article seized is an imitation or is a substitute for such an article or that it resembles another article of food under the name of which it was sold, the report of the analyst which has only given the analysis of the contents would not go to prove that it was an imitation or a substitute (w).

No doubt, selling turmeric powder, which is an article of food, containing any foreign substance is an offence punishable under Section 16 (1) read with section 7 rule 44 (h). of the rules framed under the Act. But according to Section 2 (IX) (a) an article of food shall be deemed to be misbranded if it is an imitation or a substitute for an article of food or that it resembles it in a manner likely to deceive. Where the prosecution has failed to prove that the turmeric powder was sold by the accused as an article of food and there is positive evidenc on behalf of the accused that he sold the powder for external use only he cannot be held guilty under rule 44(h) (w)

Label showing fictitious name of manufacturer amounts to misbranding (x)

18. Section 7 (v) Sale etc. of an article of food in contra-vention of any rule made under the Act : Under the Prevention of Food Adulteration Act and the rules framed thereunder, the moistur econtent of butter should not exceed 16% (rule 46). The fact that in butter obtained by the hand churning process adopted in village

(v) *Rakhal Chandra Vs, Purna Chandra*—A.I.R. 1930 Cal. 273=34 C.W.N. 281=51 C.L.J. 227=57 Cal. 1123=15 All. Cr. R. 45.=127 I.C. 57=31 Cr. L.J. 1151=1930 Cr. C. 353.

(w) *The Public Prosecutor (Andhra Pradesh) V. Satyanarayan* A.I.R. 1958 Andh. Pra. 681=1958 Andh. W.R. 528=1958 M.L.J. (Cri) 455.

(x) *Dharam Deo. V. State* A.I.R. 1958 All 865.

parts it is impossible and is not practicable to avoid the higher percentage of moisture is no justifiable defence in a prosecution for selling butter containing more than the permitted moisture contents, which is contrary to the rules (a).

SECTION 8

8. Public Analysts. The state Government may by notification in the official Gazette, appoint persons in such number as it thinks fit and possessing such qualifications as may be prescribed, to be public Analysts and define the local areas over which they shall exercise jurisdiction :

Provided that no person who has any financial interest in the manufacture, import or sale of any article of food shall be so appointed :

Provided further that the State Government may appoint one Public Analyst for two or more local areas, such local areas being regarded as one unit for the purposes of this Act.

SYNOPSIS

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|---|---|
| 1. Section explained and analysed | duties in case he is transferred to another area ? |
| 2. Qualification of persons who can be appointed public analysts. | 5. Additional public analyst, whether a public analyst. |
| 3. Person who can be appointed public analysts. | 6. State Government Notifications appointing public analysts. |
| 4. Whether a person appointed as a public analyst for any local area can exercise his powers or perform his | 7. Duties of Public Analyst. |
| | 8. Whether the Public Analyst is bound to carry out all the tests himself ? |

COMMENTARY

1 Section explained and analysed. Under this section the State Government is authorised to appoint by Notification in the Official Gazette such persons in such number as it thinks fit but who possess the prescribed qualifications to be public analysts and

(a) A. S. Arunachala Nadar V. State (1958) 2 M.L.J. 408=(1958) M.L.J. Cr. 836.

to define also the local areas over which they shall exercise jurisdiction :

Provided that no person shall be appointed as a public analyst who has any financial interest in the manufacture, import or sale of any article of food. The State Government can also appoint even one public analyst for two or more local areas which shall be regarded as one unit for the purposes of this Act.

✓ **2. Qualifications of persons who can be appointed public analysts.** Rule No. 6 as framed by the Central Government under Sec. 23 (e) and as given in Part IV under the heading 'Public Analysts and Food Inspectors' prescribes the qualifications of public analysts given below :—

6. Qualifications of Public analysts—A person shall not be qualified for appointment as public analyst unless he—

- (i) is a graduate with Chemistry as one of the subjects, of a University recognised for this purpose by the State Government and has had not less than five years post-graduate experience in the analysis of food in a laboratory under the control of—
 - (a) a public analyst appointed under the Act, or
 - (b) a chemical examiner to Government, or
 - (c) a Fellow of the Royal Institute of Chemistry of Great Britain (Branch E), or
 - (d) the head of an institution specially approved for the purpose by the State Government; or
- (ii) is an M.Sc. in Chemistry, or holds a research degree on the subject, of a University recognised for this purpose by the State Government, and has had not less than two years post-graduate experience in the analysis of articles of food under the control of—
 - (a) a public analyst appointed under the Act, or
 - (b) a chemical examiner to Government; or
 - (c) a Fellow of the Royal Institute of Chemistry of Great Britain (Branch E), or
 - (d) the head of an institution specially approved for the purpose by the State Government; or
- (iii) is a graduate in medicine of a University recognised for the purpose by the State Government with a post-graduate qualification in Public Health and with experience in food analysis for at least five years; or
- (iv) is a Fellow of the Royal Institute of Chemistry of Great Britain (Branch E) with at least one year's experience of

Great Britain (Branch E) with at least one year's experience of food analysis in India :

Provided that for a period of four years from the commencement of the Act, persons whose qualifications, training and experience are regarded by the State Government as affording, subject to such further training, if any, as may be considered necessary, a reasonable guarantee of adequate knowledge and competence may be appointed as public analysts.

Provided further that any person appointed as a public analyst in term of the preceding proviso may be allowed to hold his post after the said period of four years, if the State Government is satisfied that he continues to possess adequate knowledge and competence as public analyst.

3. Persons who can be appointed 'Public Analyst'. Though the word "person" includes any company or association or body of individuals, whether incorporated or not according to the General Clauses Act Sec 3 (42), but here under this section the person means an individual and not any official body or office which any person holds. This is clear from the wording of the section which requires that for the appointment of a person as a public analyst his qualifications have to be prescribed under the rules. Moreover, there is further proviso that no person can be appointed as a public analyst who has any financial interest in the manufacture, import or sale of any article of food.

4. Whether a person appointed as a Public Analyst for any local area can exercise his powers or perform his duties in case he is transferred to another area:— According to the clear wording of this section the duties and powers of a public analyst can be exercised only in respect of a specified local area or areas constituting one unit as long as he is public analyst in that area or unit. In case he is transferred the said powers and duties can be exercised and performed only by the person who is appointed by the State Government by notification in the Official Gazette as a public analyst for the said area or unit.

5. Additional Public Analyst whether a "Public Analyst" : Section 8 of the Central Act corresponds to Section 4 of the Madras Prevention of Adulteration Act (III) of 1918. It was held under section 4 that there can be several public analysts in relation to a particular area and when there are already one or more Public Analysts appointed for such area, the person subsequently appointed may be described as Additional Public Analyst. It is not part of the designation of the office, but only description of the fact that he is in addition to the other Public Analyst already operating in relation to the area. Hence a person who is described

as an additional Public Analyst is Public Analyst within the meaning of the Act(a).

Even though the Notification mentions a person appointed to be additional Public Analyst, he could be accepted as Public Analyst for the purpose of the Act, where there is evidence that the powers and duties are the same as those of a Public Analyst and that he is not in any way subordinate to the Public Analyst i.e. not his assistant or a deputy analyst. But to raise the presumption in favour of the certificate given by him it must conform to the form prescribed by the rules given in the appendix and where the certificate shows that it is given by the Additional Public Analyst and not the Public Analyst the prosecution cannot rely upon the certificate as constituting sufficient evidence of the facts stated therein(b).

A Public Analyst also includes a person appointed to exercise the powers of a Public Analyst. (c)

6. State Government Notification appointing Public Analysts.

(i) Punjab.

Health Department Notification dated Simla 3, the 13th March, 1957 No. 406(5)-6HBI-56/16321 311 (Ch) :—In partial modification of Punjab

Government Notification No. 16042(S)-3HB-55/32233, dated the 11470 (ch)

2nd December, 1935, and in exercise of the powers conferred by section 8 of the Prevention of Food Adulteration Act, 1954 (No. 37 of 1954) read with rule 6 of the Prevention of Food Adulteration Rules, 1955, the Governor of Punjab is pleased to appoint Dr. B.D. Kochar, B. Sc., F.R.I.C., as Public Analyst for the purpose of the said Act for all the local areas in the re-organised State of joint Punjab.

(ii) U. P. : The Government Notification, published in the U. P. Government Gazette, Part I, page 246, dated February 18, 1956, whereby Public Analysts have been appointed for Uttar Pradesh "Miscellaneous", dated, February 9, 1956. "No. 10556/XVI-P.H.-9722-55. In supersession of Notification No 1328/XIV (P.H.)-706-53, dated September, 2, 1953 and in exercise of the powers conferred by section 8 of the Prevention of Food Adulteration Act, 1954 (Act XXXVII of 1958), the Governor is pleased to

(a) Public Prosecutor Vs P. K. Ram Chandra Iyar—1956 And.W.R. 1048 (I L.R.) 10 Cal. 1026 doubted.

(b) In re Bhi Khablia Ram Dass A I.R. 1955 N.U.C. (Bomb.)3645.

(c) Rameshwar Das Vs. Emperor—A.I.R. 1936 All. 86=37 Cr. I. J. 360=1936 A.W.R. 180=8 R.A. 695=(1936) A.L.J. 311=160 I.C. 1026.

appoint the following persons, as Public Analysts for the wt of Uttar Pradesh, which shall be treated as one single Unit for the purposes of the said Act" :—

"(1) Dr. A. C. Chatterji, D. Sc. Dr. Ing. (Berlin), Public Analyst to Government (U. Uttar Pradesh)".

"(2) Sri S. C. Roy, M. Sc., F.I.C., Public Analyst to Government (U. Uttar Pradesh)".

7. **Duties of Public Analyst :** The duties of Public Analysts are given in Rule 7 made by the Central Government under sec. 23 of the Act given in Part IV of the Rules. Rule No. 7 reproduced below :—

(1) On receipt of a package containing a sample for analysis from a Food Inspector or any other person, the public analyst or officer authorised by him shall compare the seals on the container and the outer cover with specimen impression received separately and shall note the condition of the seals thereon.

(2) The Public Analyst shall cause to be analysed such samples of articles of food as may be sent to him by Food Inspector or by any other person under the Act.

(3) After the analysis has been completed, he shall forthwith supply to the person concerned a report in Form III of the rules of such analysis.

(4) **Bombay:** No. P. F. A-1055 D-11.—In exercise of powers conferred by section 8 of the Prevention of Food Adulteration Act (XXXVII of 1954), the Government of Bombay hereby appoints the persons specified in column 1 of the Schedule appended hereto to be public analysts and defines the local areas respectively against them in column of the said Schedule as local areas over which they shall exercise jurisdiction.

SCHEDULE.

Persons 1	Local Area 2
Officer in charge, Public Health Laboratory, Greater Bombay Municipal Corporation.	The Municipal Corporation Greater Bombay.
The Municipal Commissioner acting under the general or Special orders of the Corporation.	The Municipal Corporation the City of Poona.
Officer in charge, Public Health Laboratory, Ahmedabad Municipal Corporation.	The Municipal Corporation the City of Ahmedabad.

SCHEDULE (Contd.)

Persons

1

Local Area

2

Assistant Director of Public Health, I/C, Public Health Laboratory, Poona. Dhulia Municipal Area, Distt. West Khandesh.

—do— Sholapur Municipal Area, Distt. Sholapur.

—do— Ahmednagar Municipal Area, Distt. Ahmednagar.

—do— Amalner Municipal Area, Distt. East Khandesh.

—do— Hubli Municipal Area, Distt. Dharwar.

—do— Thana Municipal Area, Distt. Thana.

—do— Pandharpur Municipal Area, Distt. Sholapur.

—do— Nasik Municipal Area, Distt. Nasik.

—do— Belgaum Municipal Area, Distt. Belgaum.

—do— Trimbak Municipal Area, Distt. Nasik.

—do— Barai Municipal Area, Distt. Sholapur.

—do— Bhamburda Municipal Area, Distt. East Khandesh.

—do— Dharwar Municipal Area, Distt. Dharwar.

—do— Malegaon Municipal Area, Distt. Nasik.

—do— Igatpuri Municipal Area, Distt. Nasik.

—do— Chopda Municipal Area, Distt. East Khandesh.

—do— Satara City Municipal Area, Distt. Satara.

—do— Chalisgaon Municipal Area, Distt. East Khandesh.

—do— Mahabaleshwar Municipal Area, Distt. North Satara.

—do— Gadag-Belgeri Municipal Area, Distt. Dharwar.

—do— Marwad Municipal Area, Distt. Nasik.

SCHEDULE (Contd.)

Person 1	Local Area 2
Assistant Director of Health I/C Public Health Laboratory, Poona	Bagalkot Municipal Area, Distt. Bijapur
—do—	Jalgaon Municipal Area, Distt. East Khandesh.
—do—	Nandurbar Municipal Area, Distt. West Khandesh.
—do—	Panchgani Municipal Area, Distt. North Satara.
—do—	Miraj Municipal Area, Distt. South Satara.
—do—	Bijapur Municipal Area, Distt. Bijapur.
—do—	Karad Municipal Area, Distt. North Satara.
—do—	Erandol Municipal Area, Distt. East Khandesh.
—do—	Sangli Municipal Area, Distt. South Satara.
—do—	Raver Municipal Area, Distt. East Khandesh.
—do—	Kalyan Municipal Area, Distt. Thana.
—do—	Ilkal Municipal Area, Distt. Bijapur.
—do—	Guledgud Municipal Area, Distt. Bijapur.
—do—	Kolhapur Municipal Area, Distt. Kolhapur.
—do—	Faizpur Municipal Area, Distt. East Khandesh.
—do—	Shirpur Municipal Area, Distt. West Khandesh.
—do—	Shrirampur Municipal Area, Distt. Ahmednagar.
—do—	Yeola Municipal Area, Distt. Nasik.
—do—	Shahada Municipal Area, Distt. West Khandesh.
—do—	Sawantwedi Municipal Area, Distt. Ratnagiri.
—do—	Dharangaon Municipal Area, Distt. East Khandesh.
—do—	Ratnagiri Municipal Area, Distt. Ratnagiri.

SCHEDULE (Contd.)

Persons
1Local Area
2

Assistant Director of Health I/C Public Health Laboratory, Poona	Vengurla Municipal Area Distt. Ratnagiri.
—do—	Wai Municipal Area, Distt. North Satara.
—do—	Savda Municipal Area, Distt. East Khandesh.
—do—	Malvan Municipal Area, Distt. Ratnagiri
—do—	Junnar Municipal Area, Distt. Poona.
—do—	Pachora Municipal Area, Distt. East Khandesh
—do—	Savnur Municipal Area, Distt. Dharwar.
—do—	Ichalkarani Municipal Area, Distt. Kolhapur
—do—	Rabakavi - Banhatti Municipal Area, Distt. Bijapur.
—do—	Sinnar Municipal Area, Distt. Nasik.
Chief Chemist, Public Health Laboratory, Boroda,	Kapadvanj Municipal Area, Distt. Kaira.
—do—	Broach Municipal Area, Distt. Broach.
—do—	Nadiad Municipal Area, Distt. Kaira.
—do—	Ankleshwar Municipal Area, Distt. Broach.
—do—	Godhra Municipal Area, Distt. Panchmahals.
—do—	Bulsar Municipal Area, Distt. Surat.
—do—	Umreth Municipal Area, Distt. Kaira.
—do—	Viramgam Municipal Area, Distt. Ahmedabad.
—do—	Anand Municipal Area, Distt. Kaira.
—do—	Rander Municipal Area, Distt, Surat.
—do—	Dakor Municipal Area, Distt. Kaira.

SCHEDULE (Contd.)

Persons 1	Local Area 2
Chief Chemist, Public Health Laboratory, Baroda.	Amreli Municipal Area, Distt. Amreli.
—do—	Navsari Municipal Area, Distt. Surat.
—do—	Dabhoi Municipal Area, Distt. Baroda.
—do—	Kadi Municipal Area, Distt. Mehsana.
—do—	Karjan Municipal Area, Distt. Baroda.
—do—	Padra Municipal Area, Distt. Baroda.
—do—	Mehsana Municipal Area, Distt. Mehsana.
—do—	Radhanpur Municipal Area, Mehsana.
—do—	Vadnagar Municipal Area, Distt. Mehsana,
—do—	Vijapur Municipal Area, Distt. Mehsana.
—do—	Kalol Municipal Area, Distt. Mehsana.
—do—	Sidhpur Municipal Area, Distt. Mehsana.
—do—	Vyara Municipal Area, Distt. Surat.
—do—	Billimora Municipal Area, Distt. Surat.
—do—	Abu Road Municipal Area, Distt. Banaskantha.
—do—	Dohad Municipal Area, Distt. Panchmahals.
—do—	Jambusar Municipal Area, Distt. Broach.
—do—	Petlad Municipal Area, Distt. Kaira.
—do—	Dhinoj Municipal Area, Distt. Mehsana.
—do—	Rajpipla Municipal Area, Distt. Broach.
—do—	Dhari Municipal Area, Distt. Amreli.

SCHEDULE (Contd.)

Persons 1	Local Area 2
Chief Chemist, Public Health Laboratory, Baroda.	Deesa Municipal Area, Distt. Banaskantha.
—do—	Abu Municipal Area, Distt. Banaskantha.
—do—	Unzha Municipal Area, Distt. Mehsana.
—do—	Visnagar Municipal Area, Distt. Mehsana,
—do—	Balasinor Municipal Area, Distt. Kaira.
—do—	Borsad Municipal Area, Distt. Kaira.
—do—	Palanpur Municipal Area, Distt. Banaskantha.
—do—	Modasa Municipal Area, Distt. Sabarkantha.
—do—	Chhota Udepur Municipal Area, Distt. Baroda.
Medical Officer of Health, Surat Municipality.	Surat Municipal Area.
Chemist I/C Public Health Laboratory, Baroda Municipality.	Baroda Municipal Area.

Published in the Bom. Government Gazette dated 19-1-56. (Part IV-A) (PP. 34-32).

8. Whether the Public Analyst is bound to carry out all the tests himself: The use of the words "shall cause to be analysed" in rule No. 7 sub-clause (2) clearly indicates that the public analyst is not bound to carry out all the tests himself. He can get the tests performed by his Assistants under his supervision.

SECTION 9

9. *Food Inspector.* (1) Subject to the provisions of Sec. 14 the State Government may, by notification in the official Gazette, appoint persons in such number as it thinks fit, having the prescribed qualifications to be Food Inspectors for the purposes of this Act, and they shall exercise their powers within such local areas as that Government may assign them :

Provided that no person who has any financial interest in the manufacture, import or sale of any article of food shall be so appointed.

(2) Every Food Inspector shall be deemed to be a public servant within the meaning of the Indian Penal Code (Act XLV of 1860).

S Y N O P S I S

- | | |
|---|---|
| 1. Section explained and analysed. | Government frames rules |
| 2. Qualifications of persons who can be appointed as food inspectors. | respecting the requisite qualification of public analysts and food inspectors and |
| 3. Subject to the provisions of Sec. 14. | before their appointment by the State Governments u/ss |
| 4. Person who can be appointed. | 8 and 9 of the Act. |
| 5. State Government Notifications. | 7. Public Servant. |
| 6. Position before the Central | |

COMMENTARY,

1. Section explained and analysed. (i) The State Government, subject to the provisions of sec. 14 is authorised to appoint by Notification in the official Gazette persons in such number as it thinks fit but who possess the prescribed qualifications, to be Food Inspectors and to define also the local areas over which they shall exercise jurisdiction :

Provided that no person can be appointed as Food Inspector who has any financial interest in the manufacture, import or sale of any article of food.

(ii) Every Food Inspector is to be deemed a public servant within the meaning of Indian Penal Code (XLV of 1860).

2. Qualifications of persons who can be appointed Food Inspectors. The Central Government under section 23 (e) has framed the following rule No. 8 as given in part IV under the heading "Public Analysts and Food Inspectors" prescribing the qualifications of food inspectors.

8. A person shall not be qualified for appointment as food inspector unless he—

(i) is a medical officer in charge of the health administration of a local area ; or

(ii) is a graduate in medicine, or a licentiate in medicine, or

(iii) is a holder of qualification in sanitary science registrable as an additional qualification by the State Medical Council, or

Health Officers Examination certificate, or possesses qualifications prescribed by the respective State Governments for appointment of sanitary inspectors or health inspectors :

Provided that for a period of four years from the date on which the Act takes effect, persons whose qualifications, training and experience are regarded by the State Government as affording, subject to such further training, if any, as may be considered necessary, a reasonable guarantee of adequate knowledge and competence may be appointed as food inspectors.

3. Subject to the provisions of Sec. 14. Under Sec. 14 The Central Government is authorised to appoint by Notification in the Official Gazette any person to exercise the powers of a Food Inspector under Secs. 10 and 11—

(a) at any major port, air port, or land customs station in respect of any article of food which is being imported through such port or station ;

(b) in respect of any railway station or group of railway stations where food is being sold :

Provided that the Central Government may, instead of making any appointment under this section, authorise any food inspector in any State in which the major port, air port or land customs station or railway station is situate to exercise such powers.

(2) Every person appointed or authorised under sub-section (1) shall be deemed to be a food inspector for the purposes of this Act.

4. Persons who can be appointed. Though the word “person” includes any company or association or body of individuals whether incorporated or not according to the General Clauses Act, Sec. 3 (42), but here under this Sec. the word person means an individual and not any official body or any office which any person holds. This is clear from the wording of the Section which requires that for the appointment of a person as Food Inspector his qualifications have to be prescribed under the rules. Moreover, there is further provision that no person can be appointed as a Food Inspector who has any financial interest in the manufacture, import or sale of any article of food.

5. State Government Notifications.

(i) Punjab.

Published in the Punjab Gazette, Part I, dated February 14, 1958

Magha 25, 1879 Saka.

Health Department, the 6th January, 1958. No. 5743-S-6HBII-57/4920—

In exercise of the powers conferred by Section 9 of the Prevention of Food Adulteration Act, 1954, read with Rule of the Prevention of Food Adulteration Rules 1955, the Governor of Punjab is pleased to appoint (a) all the District Medical Officers of Health, (b) all the Additional District Medical Officers of Health in the State of Punjab, as Food Inspectors.

NOTIFICATION

Dated Simla-2. the 29th April, 1958.

No. 14940-S-6HBII-57/33630. In exercise of the powers conferred by Section 9 of the Prevention of Food Adulteration Act, 1954 (No. 37 of 1954), read with rule 8 of the Prevention of Food Adulteration Rules, 1955, the Governor of Punjab is pleased to appoint the following Government Food Inspectors namely :—

- | | |
|------------------------------|--------------------------------|
| 1. Sh. Sita Ram Sharma. | 12. Sh. Jaswant Rai Nayar. |
| 2. Sh. Sarbjit Singh. | 13. Sh. Mohinder Partap Singh. |
| 3. Sh. Madan Lal Kapur. | 14. Sh. Rajpal Singh. |
| 4. Sh. Madanjit Singh. | 15. Sh. Gurdial Singh. |
| 5. Sh. Sadhu Singh Jogi. | 16. Sh. Raj Bhushan. |
| 6. Sh. Chuni Lal Grover. | 17. Sh. Devki Nandan. |
| 7. Sh. Kishan Chand. | 18. Sh. Mohinder Kumar Dhir. |
| 8. Sh. Prithvi Raj Malhotra. | 19. Sh. Dev Raj. |
| 9. Sh. Partap Chand. | 20. Sh. Yashwant Rai. |
| 10. Sh. Roshan Singh. | 21. Sh. Harbhajan Singh. |
| 11. Sh. Dwarka Nath Duggal, | 22. Sh. Kewal Krishnan Mehra. |
- as food Inspectors for all the local areas in the district in which the official is posted as Food Inspector.

2. In exercise of the powers conferred by Section 20 of the Prevention of Food Adulteration Act, 1954 (No. 37 of 1954), the Governor of Punjab is further pleased to authorise the above mentioned food inspectors to institute prosecutions against the persons committing offences under the said Act within the limits of their respective local area or areas.

3. The Food Inspectors appointed in the Punjab State under the Prevention of Food Adulteration Act, 1954, will have no jurisdiction over the railway stations and railway premises unless they are also appointed as Food Inspectors by the Central Government under section 14 of the said Act.

4. Notifications No. 4692-Ch 6HBII-57/12-84, dated 28th June 1957 and No. 5726-S-6HBII-57/1963, dated the 6th Jan: 58 are hereby, cancelled.

(To be published in Part I of the Punjab Government Gazette)

Health Department. Notification. Dated Simla-2, the 4th June, 1957. No. ³¹²⁷~~3377~~ Ch-S-6HB-II-57/48541. In exercise of the powers conferred by Section 9 of the Prevention of Food Adulteration Act, 1954 (No. 37 of 1954), read with Rule 8 of the Prevention of Food Adulteration Rules, 1955, the Governor of Punjab is pleased to appoint:—

- | | |
|---|---|
| 1. Director of Health Services (Health) Punjab. | In all the Local Areas in the New State. |
| 2. Deputy Director of Health Services, Punjab. (Public Health), Punjab. | Punjab |
| 3. Assistant Director of Health Services, (Head Quarters), Punjab. | -do- |
| 4. Dr. Bir Mohan Banati, Assistant Health Officer. | In all the local areas in the District of Hissar. |
| 5. Dr. Hari Ram, Asstt. Health Officer. | Gurgaon. |
| 6. Dr. Chhajju Mal, Assistant Officer. | Karnal. |
| 7. Dr. Som Nath Pandit, Assistant Health Officer. | Kangra. |
| 8. Dr. Satya Pal Sayal, Assistant Health Officer. | Hoshiarpur. |
| 9. Dr. Sunder Singh Bhatia, Asstt. Health Officer. | Jullundur. |
| 10. Dr. Jagan Nath, Assistant Health Officer. | Ludhiana. |
| 11. Dr. Harbans Singh, Assistant Health Officer. | Amritsar. |
- as Food Inspectors.

2. In exercise of the powers conferred by Section 20 of the Prevention of Food Adulteration Act, 1954, (No 37 of 1954), the Governor of Punjab, is further pleased to authorise the above mentioned Food Inspectors to institute prosecutions against the persons committing offences under the said Act within the limits of their respective local area or areas.

3. The Food Inspectors appointed in the Punjab State under the Prevention of Food Adulteration Act, 1954, will have no jurisdiction over the railway stations and railway premises unless they are also appointed as Food Inspectors by the Central Government under Section 14 of the said Act.

(ii) U.P. The following is the Gazette Notification, published

in the U.P. Government Gazette, Part I, page 246, dated February 19, 1956, whereby Food Inspectors have been appointed for the Uttar Pradesh : —

Dated. February, 9, 1956. No. 10656 (iv) XVI-P.H. 722-55.

In exercise of the powers conferred by Section 9 of the Prevention of Food Adulteration Act, 1954 (Act XXXVII of 1954), the Governor is pleased to appoint the following persons as "Food Inspectors" in Uttar Pradesh for the purposes of the said Act :

"(a) For Rural Areas (including Town Areas) and Notified Areas—All District Medical Officers of Health, Assistant Medical Officers of Health, Medical Officers Incharge Anti-Epidemic Operations and Sanitary Inspectors of the district in respect of the areas falling within their respective jurisdictions."

"In a Notified Area in which the District Medical Officer of Health, Assistant Medical Officer of Health or Sanitary Inspector of the District Health Service does not have his headquarters, the Secretary or the Superintendent of the Notified Area shall be an additional Food Inspector who shall exercise jurisdiction only within the limits of the Notified Area concerned for a period of 4 years from the date of which the said Act came into force."

"(b) For Municipal Areas—All Municipal Medical Officers of Health, Additional Municipal Medical Officers of Health, Assistant Medical Officers of Health, Medical Officers Incharge Anti-Epidemic Operations, Chief Sanitary Inspector and Sanitary Inspectors in respect of the said area falling in their respective jurisdictions."

"In a municipality in which none of the members of the Health staff mentioned above has his headquarters, the Executive Officer or the Secretary of the Municipal Board shall be Additional Food Inspector, who shall exercise jurisdiction only within the limits of the Municipality in which he is employed for a period of 4 years from the date on which the said Act came into force."

"(c) For Cantonment Areas—All Senior Executive Medical Officers, Officers Commanding, Military Hospitals, Medical Officers and Sanitary Inspectors in respect of the above areas falling in their respective jurisdictions. In a Cantonment in which no such Officer is available to execute these powers, the Executive Officer of the Cantonment Board shall be the Food Inspector only within the limits of the Cantonment in which he is employed, for a period of 4 years from date on which the said Act came into force".

(iii) **Bombay.** No P.F.A. 1055-D-III. In exercise of the powers conferred by Section 9 of the Prevention of Food Adulteration Act 1954 (XXXVII of 1954), the Government of Bombay hereby appoints the persons specified in column I of the Schedule

Schedule (Contd.)

Persons 1	Local Area 2
Shri E. D. Edanwalla.	The Municipal Corporation of Greater Bombay.
„ D.D. Bapat.	„
„ Y. A. Mallik.	„
„ H. S. Bapat.	„
„ V. S. Dighe.	„
„ K. G. Darne.	„
„ M. B. Phatarpekar.	„
„ K. S. Rao.	„
„ V. S. Mular.	„
„ J. G. Kumbhakarna.	„
„ R. S. Mulgaonkar.	„
„ M. R. Desai.	„
„ P. S. Chavan.	„
„ H. B. Khanvlikar.	„
„ D. M. Joshi.	„
„ D.L. Shinde.	„
„ P. S. Keer.	„
„ M. K. Nayyar.	„
„ J. N. Joshi.	„
„ T. A. Vasavkar.	„
„ Y. Y. Khan.	„
„ V. R. Paradkar.	„
„ M. R. Shetye.	„
„ M. Menezes.	„
„ M. R. Sawant.	„
„ D. B. Kanhare.	„
„ D. S. More.	„
„ S. J. S. bhare.	„
„ R. D. L. hi.	„
„ M. M. ngare.	„
„ K. V. w. vinde.	„
„ G. S. Neurkar.	„
„ S. M. Melawade.	„
„ V. G. Lunaye.	„
„ M. Naronha.	„
„ A. G. Gavankar.	„
„ R. G. Shinde.	„
„ V. M. ad	„
„ V. V. Pitre.	„
„ S. M. Vidvans.	„
„ R. S. Mulgaonkar.	„
„ R. P. Chitnis.	„
„ K. K. Sheth	„

Schedule (Contd.)

Person.

1

Local Areas.

2

Shri S. K. Phansekar.	The Municipal Corporation of Greater Bombay.
„ R. V. Sohani.	„
„ G. D. Gangurde.	„
„ V. N. Asgekar.	„
„ L. H. Shinde.	„
„ V. S. Ajgaonkar.	„
„ Candid Pereira.	„
„ B. M. Patil.	„
„ S. B. Parkar.	„
„ S. R. Gole.	„
„ A. N. Panditrao.	„
„ V. G. Khandwe.	„
„ A. J. Pereira.	„
„ D. K. Mhatre.	„
„ V. D. Chakre.	„
„ S. P. Pandya.	„
„ J. T. Bhat.	„
„ H. A. Patna.	„
„ M. R. Bhagwate.	„
„ G. P. Shukla.	„
„ S. N. Jadhav.	„
„ J. V. Kanvinde.	„
„ H. D. Aga.	„
„ A. C. Ferdinand.	„
„ M. R. Shinde.	„
„ M. G. Naik.	„
„ G. V. Gaitonde.	„
„ K. G. Desai.	„
„ Bhopatkar, S.B.	The Municipal Corporation of the City of Poona.
„ More, G. S.	„
„ Datar, A. R.	„
„ Vaidya, A. S.	„
„ Marathe, B. V.	„
„ Gavade, D. R.	„
Dr. Joglekar, R. G.	„
Dr. Ram Dayel Vohra	„
Dr. Ambalal Gaurishanker Purohit.	The Municipal Corporation of the City of Ahmedabad.
Shri Dahyabhai Dwarkadas Shah	„
„ Jagjivandas Khushaldas Mistry.	„
	„

Schedule (Contd.)

Persons 1	Local Area 2
Shri Ravishankar Vajeshanker Dwivedi.	The Municipal Corporation of the City of Ahmedabad.
Shri Hargovind Vishvanath Shukla.	
Shri Natversinh Navalsinh Rathod.	
Shri Suresh Educal Parmer.	
Shri Ambalal Ishwarlal Patel.	
Shri Dipendra Chandulal Bhatt.	
Shri Martand Balvant Risaldar.	Baroda Borough Municipality.
Shri Manubhai Chhotabhai Zaaveri.	Surat Borough Municipality.
Shri Dolatrai K. Desai.	—do—
Shri Kakasaheb Shankarao Mane	Ichalkaranji Borough Municipality.
Shri Sarad Vishwambhar Keshar.	Wai Municipality.
Shri Kantilal Manilal Bhatt.	Dakor Municipality.
Shri R. T. Sathe.	Kalyan Borough Municipality.
Shri H. G. Deshmukh.	—do—
Shri S. R. Jadhav.	—do—
Shri Bhanushankar Prabhshankar Purorhit.	Balimore Municipality.
Shri Chhotabhai Kashibhai Patel.	Petlad Municipality.
Shri Shivkumar Shankarbhai Trevedi	—do—
Shri M. G. Wani.	Raver Municipality
Shri Somabhai Gordhandas Patel	Visnagar Municipality.
Shri J. N. Deshmukh.	Trimbak Municipality.
Shri Jashwantsinh Baldevsinh Thakore.	Rander Town Municipality.
Shri S. T. Chavan.	Manmad Municipality.
Shri Vithal Baburao Shinde,	Miraj Municipality.
Shri Pandharinath Tukaram Sonar.	Bhusaval Borough Municipality.
Shri Narendra Gajanan Bhatt.	Vraya Municipality.
Shri Chunilal Narbheram Shah.	—do—
Shri M. M. Shah.	Kalol Municipality (Mehsan Distt)
Shri Madhusudan A. Bhatt.	Nadiad Borough Municipality.
Shri Khodabhai B. Desai.	—do—
Shri Shantilal N. Patel.	—do—
Shri Karsanbhai Narasibhai Patel	Modasa Municipality.
Shri Dattatraya Hari Deshmukh	Junnar Municipality.
Shri Ratan Singh Rajpurohit.	Abu Road Municipality.

Schedule (Contd.)

Persons

1

Shri S. D. Chandakkar.
 Shri M. A. Padture
 Shri Vasant Vinayak Bansode.
 Shri N. T. Nachanani.
 Shri P. R. Naik.
 Shri B. M. Awati.
 Shri R. G. Joshi.
 Shri P. A. Joshi.
 Shri R. L. Zende.
 Shri Jayantilal Lallubhai Bhatt.
 Shri Dinker N. Bhatt.
 Shri Manibhai Tulsibhai Patel.
 Shri B. H. Dave
 Shri F. P. Somakkanayar.
 Shri G. V. Khanolkar.
 Shri Jethalal Dungersi Somam.
 Shri Kantilal Chhotalal Trivedi.
 Shri Ratilal Bhogilal Gandhi.
 Shri Vasant Narayan Yadnik.
 Shri Babula Mohanlal Shah.
 Shri Narayan Subrao Kulkarni
 Shri B. H. Kulkarni.
 Shri N. R. Deshpande.
 Shri R. B. Deshpande.
 Shri P. N. Madhekar.
 Shri G. P. Joshi.
 Shri S. S. Kotkunde.
 Shri H. V. Bhosekar
 Shri M. R. Diwakar.
 Shri K. M. Katap.
 Shri V. G. Shirke.
 Shri V. G. Annegiri.
 Shri M. B. Nandurkar.
 Shri V. S. Patankar.
 „ Kanchanlal C. Daru.
 „ Rasik al O. Shah.
 „ M. U. Ganjewale.
 „ V. R. Anekar.
 „ Jayantilal Somalal Mehta
 „ Mafatlal Manilal Patel
 „ M. D. Ghodke.
 „ Saiyed Mazharali M. Kadri
 „ Bhanuprasad Narayanji
 Acharya.

Areas

2

Panchgani Municipality.
 Belgaum Borough Municipality.
 Pandharpur Municipality.
 Igatpuri Municipality.
 Bulsar Municipality.
 Dharangaon Municipality.
 Rajpipla Municipality.
 Sirhpur Municipality.
 Erandol Municipality.
 Padra Municipality.
 Chhota Udepur Municipality.
 Mehsana Municipality.
 Deesa Municipality.
 Savanur Municipality.
 Satara City Borough Municipality
 Viramgam Municipality.
 Kapadwanj Municipality.
 Jambusar Municipality.
 Chopda Municipality
 Vadnagar Municipality.
 Dharwar Municipality.
 Sholapur Municipality.
 —do—
 —do—
 —do—
 —do—
 —do—
 —do—
 —do—
 —do—
 —do—
 —do—
 —do—
 —do—
 Dabhoi Municipality.
 —do—
 Hubli Borough Municipality.
 Kolhapur Municipal Borough.
 Patna Municipality.
 Radhanpur Municipality.
 Barsi Borough Municipality
 Palanpur Municipality.
 Sidhpur Municipality.

Scheduld (Contd.)

Persons 1	Areas 2
Shri Anant Shridhar Mahajan.	Malvan Municipality.
„ Vipin Ramanlal Gandhi.	Broach Borough Municipality.
„ P. V. Bhalerao.	Ahmednagar Borough Municipality
„ Ekrath Dasharath Kolte.	Vengurla Municipality.
„ J. R. Dave	Borsad Municipality.
„ Shantilal Ramshanker Pandhyar	Anad Municipality.
„ N. G. Harwani.	Godhra Borough Municipality.
„ C. J. Shah.	—do—
„ R. A. Pandhya.	—do—
„ Hanamantappa Burusan- gappa Gudadari.	Guledgud Municipality.
„ Dhirubhai Bhanushankar Acharya.	Amreli Municipality.
„ P. R. Patil	Savda Municipality.
„ G. K. Desai.	Bijapur Borough Municipality.
„ M. D. Patel.	Dhari Municipality
„ R. S. Jadhav.	Amalner Municipality.
„ Vithal Shahasing Patil.	Chalisingaon Municipal Borough.
„ Balkrishna Shridhar Pande.	Shrirampur Municipality
„ Mukund Ukha Shimpi.	Thana Borough Municipality.
„ J. W. Ajgaonkar,	Sawantiwadi Municipality.
„ Sinubhai Purshottamdas	Ankleshwar Municipality.
„ V. N. Pimpale.	Mahabaleshwar Municipality.
„ M. V. Koranne	Dhulia Borough Municipality.
„ Padmakant Motilal Vora.	Dhinjor Municipality.
„ M. G. Bhagwat.	Ratnagiri Municipal Borough.
„ C. S. Modi.	Navsari Borough Municipality.
„ Haribhai J. Naik.	Dohad Municipality.
„ R. B. Chaudhri.	Jalgaon Municipality Borough.
„ P. R. Kale.	—do—
„ V. P. Patil.	Faizpur Municipality.
„ Rasiklal Himatram Pandya.	Balasinor Municipality;
„ V. K. Havaladar.	Iikal Municipality.
„ Linganadonda Yellanagouda Desai.	Gadag-Betgeri Municipal Bo- rough.
„ R. V. Ketkar.	Shahada Municipality.
„ Sha. kar Bhikoba Kshirsagar	Karad Municipality.
„ Ishverlal Maganlal Naik.	Ungha Municipality
„ Champaklal Vrajilal Parikh	Umreth Municipality.
„ M. K. Kapade	Malegaon Borough Municipality.
„ Burad Bubulal Tulshram.	Nasik Municipal Borough

Schedule (Contd.)

Persons 1	Areas 2
Shri Sali Bagoba Sitaram.	—do—
„ Chandubhai Shankarbhai Patel.	Kadi Municipality.
„ Yadva Mahadu Koli.	Nandurbar Municipality.
„ Raveappa Basappa Mirji.	Rabkavi-Banhatti Municipality.
„ Mohamadbhai Doubhai Beh- lm.	Vijayapur Municipality.
„ R. K. Motwani.	Poona Cantonment,
„ D. S. Jadhav.	—do—
„ D. N. Bodas	—do—
„ M. H. Chowdhari,	—do—
„ P. D. Vaishnav.	Ahmedabad Cantonment Board.

(Published in the Bom Govt. Gaz. dated the 19-1-1956 Part IV A. pp. 40-46.)

6. Position before the Central Government frames rules respecting requisite qualifications of a Public Analyst and Food Inspector and before their appointment by the State Government under Section 8 and 9 of the Act : As regards the appointment of Public Analysts, Food Inspectors etc., necessary action will have to be taken by the respective State Governments under Sections 8 and 9 of the Prevention of Food Adulteration Act, 1954, after the rules have been framed by the Central Government laying down the requisite qualifications, but the existing notifications, rules, etc., in regard to the appointment of Public Analyst, forms of Public Analysts certificates etc., will continue to be in force till such time as the Central Government frames rules under the Prevention of Food Adulteration Act, 1954.

See General Clauses Act Section 6 sub-clauses b) and (c) and Sec. 25 (2) of the Prevention of Food Adulteration Act.

7. Public Servant : Every Food Inspector according to section 9 (2) is to be deemed a public servant within the meaning of section 21 of the Indian Penal Code, and according to explanation (2) to section (21) wherever the words "Public Servant" occur they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation

The offences by or against public servants are given in Chapter IX of the I. P. C. sections 151 to 171, Chapter XI sections 217 to 219- Similarly persons committing offences in relation to a public servant as given in sections 172 to 190 and section 332 I. P. C. can be prosecuted.

Under section 10 (9) of the Prevention of Food Adulteration Act any Food Inspector exercising powers under the Act or under the rules made thereunder who :—

- (a) vexatiously and without any reasonable grounds of suspicion seizes any article of food ; or
- (b) commits any other act to the injury of any person without having reason to believe that such act is necessary for the execution of his duty shall be guilty of an offence under this Act and shall be punishable for such offence with fine which may extend to five hundred rupees.

According to section 22, no suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done under this Act.

SECTION 10.

10. *Powers of Food Inspectors.* (1) A Food Inspector shall have power—

- (a) to take sample of any article of food from—
 - (i) any person selling such article ;
 - (ii) any person who is in the course of conveying, delivering or preparing to deliver such article to a purchaser or consignee ;
 - (iii) a consignee after delivery of any such article to him ; and
- (b) to send such sample for analysis to the Public Analyst for the local area within which such sample has been taken ;
- (c) with the previous approval of the Health Officer having jurisdiction in the local area concerned, or with the previous approval of the Food (Health) Authority, to prohibit the sale of any article of food with a view to preventing the outbreak or spread of any infectious disease.

(2) Any Food Inspector may enter and inspect any place where any article of food is manufactured, stored or exposed for sale and take sample of such

articles of food for analysis.

(3) Where any sample is taken under clause (a) of subsection (1) or sub-section, (2) its cost calculated at the rate at which the article is usually sold to the public shall be paid to the person from whom it is taken.

(4) If any article intended for food appears to any Food Inspector to be adulterated or misbranded, he may seize and carry away or keep in the safe custody of the vendor such article in order that it may be dealt with as hereinafter provided.

(5) The power conferred by this section includes power to break open any package in which any article of food may be contained or to break open the door of any premises where any article of food may be kept for sale.

Provided that the power to break open the door shall be exercised only after the owner or any other person in occupation of the premises, if he is present therein, refuses to open the door on being called upon to do so :

Provided further that the Food Inspector shall, in exercising the powers of entry upon, and inspection of any place under this section, follow, as far as may be, the provisions of the Code of Criminal Procedure (Act V. of 1898), relating to the search or inspection of a place by a police officer executing a search warrant issued under the Code.

(6) Any material found in the possession of a manufacturer of any article of food or in any of the premises occupied by him as such and being apparently of a kind which may be employed for purposes of adulteration and for the possession of which he is unable to account to the satisfaction of the Food Inspector, may be seized by the Food Inspector and if necessary a sample of such material submitted for analysis to a Public Analyst.

(7) Where the Food Inspector takes any action under clause (a) of sub-section (1), sub-section (2), sub-section (4) or sub-section (6), he shall, as far as possible call not less than two persons to be present at the time when such action is taken and take their signatures.

(8) Any Food Inspector may exercise the powers of a police officer under Sec. 57, of the Code of Criminal Procedure, 1898 (Act V of 1898) for the purpose of ascertaining the true name and residence of the person from whom a sample is taken or an article of food is seized.

(9) Any Food Inspector exercising powers under this Act or under the rules made thereunder who—

- (a) vexatiously and without any reasonable grounds of suspicion seizes any article of food ; or
- (b) commits any other act to the injury of any person without having reason to believe that such act is necessary for the execution of his duty shall be guilty of an offence under this Act and shall be punishable for such offence with fine which may extend to five hundred rupees.

SYNOPSIS

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| 1. Section explained and analysed. | 8. When a Food Inspector can exercise the powers of a police officer. |
| 2. Notice in Form VI necessary. | 9. Power to break open the door of any premises where any article of food is kept for sale. |
| 3. Procedure for taking samples. | 10. Scope and object of Section 10 (7). |
| 4. Notice required to be given by the food inspector for the purposes of taking samples before the sample is actually taken. | 11. Compliance with section 10 (7) essential. |
| 5. Procedure for sending the sample to public analyst. | 12. Necessity of the presence of owner or occupant at the time of search. |
| 6. Duties of a food inspector. | 13. Locality. |
| 7. Duties of the Food Inspector where he exercises his powers u/s 10 (4). | |

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| 14. Presence of search witnesses desirable though not essential. Absence will weaken the case. | 23. Section 10 (1) (c). |
| 15. Who are respectable witnesses | 24. Section 10 (4). |
| 16. Search memo | 25. Section 10 (9). |
| 17. Provisions regarding witnesses salutary. Prosecution to prove compliance was not possible | 26. Vexatiously without any reasonable ground of suspicion or belief. |
| 18. Absence of search for local witnesses—not fatal, if object of search would have been frustrated | 27. Vexatious. |
| 19. No attempt to secure respectable witnesses of locality—effect. | 28. Without any reasonable grounds of belief or suspicion. |
| 20. Evidence of search is not inadmissible for non-compliance of the provisions of sec. 103 Cr. P. C. | 29. Reasonable and probable cause. |
| 21. Section 10 (3). | 30. Question of reasonable and probable cause whether a question of law or fact. |
| 22. The effect of non-payment of price. | 31. Section (10) (9) (a). |
| | 32. Section 10 (9) (b). |
| | 33. Injury. |
| | 34. Reason to believe. |
| | 35. Who can prosecute the Food Inspector for offence u/s 10 (9). |
| | 36. Civil remedy. |

COMMENTARY

1. Section explained and analysed.

(A) Powers of Food Inspectors. (a) a Food Inspector shall have power to take samples of any article of food from—

- (i) any person selling such article ;
- (ii) any person who is in the course of conveying, delivering or preparing to deliver such article to a purchaser or consignee ;
- (iii) a consignee after delivery of any such article to him.

(b) to enter and inspect any place where any article of food is manufactured, stored or exposed for sale and take samples of such articles of food for analysis.

(c) may prohibit the sale of any article of food with a view to preventing the outbreak or spread of any infectitious disease after getting the approval of the Health Officer, having jurisdiction within the local area concerned or after having obtained the previous approval of the Food (Health) Authority.

(d) after taking the sample the food inspector is authorised to send the same for analysis to the public analyst for the local area

within which such samples have been taken.

(e) a food inspector is bound to pay to the person from whom the sample is taken its costs, calculated at the rate at which the article of which sample is taken is usually sold to the public.

(f) in case any article intended for food appears to any food inspector to be adulterated or misbranded he is empowered to seize and carry away or keep in the safe custody of the vendor such article in order that it may be dealt with as hereinafter provided.

(g) a food inspector is further empowered to seize any material found in the possession of a manufacturer of any article of food or in any of the premises occupied by him as such and being apparently of a kind which may be employed for purposes of adulteration and for the possession of which he is unable to account to the satisfaction of the food inspector and if necessary a sample of such material may be submitted by him for analysis to a public analyst.

(h) a food inspector has also power to break open any package containing an article of food or to break-open the door of any premises where any article of food may be kept for sale but subject to the following conditions —

(i) the power to break open the door can be exercised only after the owner or any other person in occupation of the premises is present therein, refuses to open the door when he is called upon to do so ;

(ii) the food inspector shall in exercising the powers of entry upon, and inspection of any place under this section, follow, as far as may be, the provision of the Code of Criminal Procedure relating to the search of or inspection of a place by a police officer executing a search warrant issued under that code.

(i) Where the food inspector takes any action under sub-section 1 (a), sub section (2), (4) or (6), he must, as far as possible, call not less than two persons to be present when such action is taken and take their signatures also.

(j) A food inspector is given also the powers of a police officer under section 57 of the Code of Criminal Procedure to be exercised to ascertain the true name and residence of the person from whom sample is taken or any article of food is seized.

(B) Liability of food inspector under section 10 (9) : A Food Inspector exercising powers under this Act or under the rules made thereunder shall be guilty of an offence under this Act and shall be punishable with a fine for the same which may extend to Rupees Five hundred in case : —

(i) he vexatiously and without any reasonable grounds of suspicion seizes any article of food ; or

- (il) commits any other act to the injury of any person without having reason to believe that such act is necessary in the execution of his duty.

2. Notice in Form VI necessary : Notice must be given by the food inspector in form No. VI as given in the appendix to the person from whom he has taken the sample of his intention to send the same for analysis—section 11 (a).

(3) Procedure for taking samples. The procedure for taking samples for analysis by a food inspector to be followed by him is given in section 11; the relevant portion of which is reproduced below.

11. "Procedure to be followed by food inspectors—(1) When a food inspector takes a sample of food for analysis, he shall—

(a) give notice in writing then and there of his intention to have it so analysed to the person from whom he has taken the sample, (see Form VI).

(b) except in special cases provided by rules under this Act separate the sample then and there into three parts and mark and seal or fasten up each part in such a manner as its nature permits; and (see Rule 15).

(c) (i) deliver one of the part to the person from whom the sample has been taken;

(ii) send another part for analysis to the public analyst; and

(iii) retain the third part for production in case any legal proceedings are taken or for analysis by the Director of the Central Food Laboratory under sub-section (2) of section 13, as the case may be.

(2) If the person from whom the sample has been taken declines to accept one of the parts, the food inspector shall send intimation to the public analyst of such refusal and thereupon the public analyst receiving a sample for analysis shall divide it into two parts and shall seal or fasten up one of those parts and shall cause it, either upon receipt of the sample or when he delivers his report, to be delivered to the food inspector who shall retain it for production in case legal proceedings are taken.

(3) When a sample of any article of food is taken under sub-section (1) or sub section (2) of section 10, the food inspector shall send a sample of it in accordance with the rules prescribed for sampling to the public analyst for the local area concerned.

This procedure must be strictly observed by the food inspector.

4. Notice required to be given by the food inspector for the purposes of taking samples before the sample is actually

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taken : Rule No. 12 as given in the appendix required that "Where a food inspector takes a sample of an article of food for the purposes of analysis he shall intimate such purpose in writing in Form VI to the person from whom he takes the sample". This Form No. VI is given in the appendix is reproduced below :—

FORM VI (See Rule 12)

To

.....
.....

I have this day taken from the premises of.....
situated at.....samples of the
food specified below to have the same analysed by the public
analyst, for.....

Details of food.

Place :

Food Inspector

Date :

Area -
.....

✓
5. Procedure for sending samples to public analyst : The procedure for sending samples is given in Part V of the rules given in the appendix under the heading sealing, fastening and despatch of samples. The relevant rules concerning the same are reproduced below :—

14. Manner of sending samples for analysis—Samples of foods for the purpose of analysis shall be taken in clean dry bottles or jars or in other suitable containers which shall be closed sufficiently tight to prevent leakage, evaporation, or in the case of dry substance, entrances of moisture, and shall be carefully sealed.

15. Bottles or containers to be labelled and addressed—All bottles or jars or other containers containing samples for analysis shall be properly labelled and the parcels shall be properly addressed. The label on any sample of food sent for analysis shall bear :—

(a) Serial No.

(b) Name of the sender with official designation, if any.

(c) Name of the vendor.

- (d) Date and place of collection.
- (e) Nature of article submitted for analysis.
- (f) Nature and quantity of preservative, if any, added to the sample.

16. Manner of packing and sealing the sample—All samples of food sent for analysis be packed, fastened and sealed in the following manner, namely :—

- (a) The stopper shall first be securely fastened so as to prevent leakage of the contents in transit.
- (b) The bottle jar or other container shall then be completely wrapped in fairly strong thick paper. The ends of paper shall be neatly folded in and affixed by means of gum or other adhesive.
- (c) The paper cover shall be further secured by means of strong twine or thread both above and across the bottle, jar or other container, and the twine or thread shall then be fastened on the paper cover by means of sealing wax on which there shall be at least four distinct and clear impressions of the seal of the sender, of which one shall be at the other top of the packet, one at the bottom and the other two on the body of the packet. The knots of the twine or thread shall be covered by means of sealing wax bearing the impression of the seal of the sender.

17. Containers of samples how to be sent to the public analyst—The container of sample for analysis shall be sent to the public analyst by registered post or railway parcel or air freight, or by hand in a sealed packet, enclosed together with a memorandum in Form VII in an outer cover addressed to the public analyst,

18. Memorandum and impression of seal to be sent separately by post—A copy of the memorandum and a specimen impression of the seal used to seal the packet shall be sent to the public analyst separately by post.

19. Addition of preservatives to samples—Any person taking a sample of any food for the purpose of analysis under the Act may add a preservative as may be prescribed from time to time to the sample for the purpose of maintaining it in a condition suitable for analysis.

20. Preservative in respect of milk, cream and gur—The preservative used in the case of samples of any milk (including skimmed and separated milk), cream and gur in liquid or semi-liquid form shall be the liquid commonly known as “formalin” that is to say, a liquid containing about 40 percent of formaldehyde in aqueous solution, in the proportion of one drop for one ounce of the sample.

21. Nature and quantity of the preservative to be noted on the label—Whenever any preservative is added to a sample, the nature and quantity of the preservative added shall be clearly noted on the label to be affixed to the container.

22. Quantity of sample to be sent to the public analyst—The quantity of sample of food to be sent to the public analyst/Director for analysis shall be as specified below :—

Articles of food			Approximate quantity to be supplied.
1. Milk	...	...	8 oz.
2. Ghee	...	---	4 oz.
3. Butter	...	...	4 oz.
4. Khoa	...	...	4 oz.
5. Dahi	...	...	8 oz.
6. Edible oils	---	...	4 oz.
7. Edible fats	...	...	4 oz.
8. Tea	---	---	8 oz.
9. Atta	...	...	8 oz.
10. Wheat flour	---	...	8 oz.
11. Gur	...	...	8 oz.
12. Cane sugar	...	...	4 oz.
13. Honey	...	---	16 oz.
14. Prepared Food	...	...	12 oz.
15. Aerated water	...	...	16 oz.
16. Vanaspati	...	...

Statutory change :—Item No. 16 has been added by rule No. 22 S. R. O. 2755, dated November 20, 1956.

The compliance of these rules is essential to avoid any chances of tempering with the sample and thereby prejudicing the accused or creating a loophole or a cause of complaint for the accused or a ground to weaken the prosecution case.

✓ (6) **Duties of a food inspector.** The duties of a food inspector have been prescribed in rule 9 of the rules made by the Central Government under section 23 of the Act which are given in the appendix.

Rule No. 9 is reproduced below :—

9. Duties of food inspector—It shall be the duty of the food inspector—

- (a) to inspect as frequently as may be prescribed by the Food (Health) Authority or the local authority all establishments licensed for the manufacture storage or sale of an article of food within the area assigned to him ;
- (b) to satisfy himself that the conditions of the licences are being observed ;
- (c) to procure and send for analysis, if necessary, samples of any articles of food which he has reason to suspect are being manufactured, stored or sold or exhibited for sale in contravention of the provisions of the Act or rules thereunder ;
- (d) to investigate any complaint which may be made to him in writing in respect of any contravention of the Provisions of the Act, or rules framed thereunder ;
- (e) to maintain a record of all inspections made and action taken by him in the performance of his duties, including the taking of samples and the seizure of stocks, and to submit copies of such record to the health officer or the Food (Health) Authority as directed in this behalf ;
- (f) to make such enquiries & inspections as may be necessary to detect the manufacture, storage or sale of articles of food in contravention of the Act or rules framed thereunder ;
- (g) to stop any vehicle suspected to contain any food intended for sale or delivery for human consumption ;
- (h) when so authorised by the health officer having jurisdiction in the local area concerned or Food (Health) Authority, to detain imported packages which he has reason to suspect contain food, the import or sale of which is prohibited ; and
- (i) to perform such other duties as may be entrusted to him by the health officer having jurisdiction in the local area concerned or the Food (Health) Authority

7. Duties of the Food Inspector where he exercises his powers u/s 10 (4) : The duties of the Food Inspector are given in rules No. 10 and 11 of the rules made by the Central Government u/s 23 of the Act, which are given in the appendix. Rules No. 10 and 11 are reproduced below :—

10. Form of order not to dispose of stock—Where the food inspector decides to keep under sub section (4) of Section 10 of

the Act in the safe custody of the vendor any stock of food which appears to him to be adulterated or misbranded, he shall after sealing the stock make an order to the vendor to that effect in Form IV; and the vendor shall comply with such order.

11. Form of receipt for food seized by a food inspector—For every article of food seized and carried away by a food inspector under sub-section (4) of Section 10 of this Act, a receipt in Form V shall be given by the food inspector to the person from whom the article was seized.

FORM IV.

(See rule 10)

Whereas† intended for food which is in your possession appears to me to be adulterated misbranded.

Now therefore under sub-section (4) of Section 10 of the Prevention of Food Adulteration Act, 1954, (7 of 1954), I hereby direct you to keep in your safe custody the said sealed stock subject to such orders as may be issued subsequently in relation thereto.

Place :

Food Inspector.

Date :

Area.....

† Here give the name of article of food.

—: o):—

FORM V.

(See rule 11)

The stock of articles of food detailed below has this day been seized by me under the provisions of sub-section (4) of Section 10 of the Prevention of Food Adulteration Act, 1954, (37 of 1954) from the premises of

..... situated at

Details of article of food seized.

Food Inspector

Date :

Area.....

8. When a Food Inspector can exercise the powers of a police officer? When a person from whom a food inspector has taken a sample of an article of food under section 10 and on being asked by the food inspector refuses to give his true name and residence, the food inspector is authorised to exercise the powers of a police officer under section 57 of the Code of Criminal Procedure to ascertain the true name and residence of such person. Section 7 of the Code of Criminal Procedure is reproduced below :—

57 (1) "When any person who in the presence of a police officer has committed or has been accused of committing a non-cognizable offence refuses, on demand of such officer, to give his name and residence or gives a name or residence which such officer has reason to believe to be false, he may be arrested by such officer in order that the name or residence may be ascertained.

(2) When the true name and residence of such person have been ascertained, he shall be released on his executing a bond, with or without sureties, to appear before a Magistrate if so required: Provided that, if such person is not resident in India, the bond shall be secured by a surety or sureties resident in India.

(3) Should the true name and residence of such person not be ascertained within 24 hours from the time of arrest or should he fail to execute the bond or, if so required, to furnish sufficient sureties he shall forthwith be forwarded to the nearest Magistrate having jurisdiction."

Refusal to give correct information about his name and residence to a food inspector is itself an offence. The food inspector is a public servant within the meaning of section 21 of the Indian Penal Code according to the provisions of section 9 (2) of this Act; and in case the person from whom sample has been taken by the food inspector under section 10 refuses to give his correct name and residence when demanded by him, he is guilty of the offence under section 176 I.P.C., which is reproduced below :—

176 "Whoever, being legally bound to give any notice or to furnish information on any subject to any public servant, as such, intentionally omits to give such notice or to furnish such information in the manner and at the time required by law shall be punished with simple imprisonment for a term which may extend to one month or with a fine which may extend to five hundred rupees, or with both;

or, if the notice or information required to be given respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with simple imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or with both;

or if the notice or information required to be given is required by an order passed under subsection (1) or section 65 of the Code of Criminal Procedure, 1898, with imprisonment of either description for a term which may extend to six months or with fine which may extend to one thousand rupees, or with both.

9. Power to break open the door of any premises where any article of food is kept for sale : This power can be exercised only if the owner or any other person in occupation of the premises, is present therein, and refuses to open the door when called upon to do so by the food inspector and the food inspector in such a case in exercising the power of entry upon and inspection of the place in question has to follow the procedure as far as may be, of the Code of Criminal Procedure, relating to the search or inspection of a place by a police officer executing search warrant. The said provisions are in Sections 102, 103, Sections 48 and 52 Cr. P.C. which are reproduced below :—

102. “Persons in charge of closed place to allow search. (1) Whenever any place liable to search or inspection under this Chapter is closed, any person residing in, or being in charge of such place shall, on demand of the officer or other person executing the warrant, and on production of the warrant, allow him free ingress thereto, and afford all reasonable facilities for a search therein.

(2) If ingress into such place cannot be so obtained, the officer or other person executing the warrant may proceed in manner provided by section 48.

(3) When any person in or about such place is reasonably suspected of concealing about his person any article for which search should be made, such person may be searched. If such person is a woman, the directions of section 52 shall be observed.”

103. “Search to be made in presence of witnesses. (1) Before making a search under this Chapter, the officer or other person about to make it shall call upon two or more respectable inhabitants of the locality in which the place to be searched is situate to attend and witness the search and may issue an order in writing to them or any of them so to do.

(2) The search shall be made in their presence, and a list of all things seized in the course of such search and of the place in which they are respectively found shall be prepared by such officer or other person and signed by such witnesses; but no person witnessing a search under this section shall be required to attend the Courts as a witness of the search unless specially summoned by it.

(3) Occupant of place searched may attend. The occupant of the place searched, or some person in his behalf, shall, in every instance, be permitted to attend during the search, and a copy of

the list prepared under this section, signed by the said witnesses, shall be delivered to such occupant or person.

(4) When any person is searched under section 102, sub-section (3), a list of all things taken possession of shall be prepared, and a copy thereof shall be delivered to such persons.

(5) Any person who, without reasonable cause, refuses or neglects to attend and witness a search under this section, when called upon to do so by an order in writing delivered or tendered to him, shall be deemed to have committed an offence under section 187 of the Indian Penal Code."

48. "Procedure where ingress not obtainable. Breaking open zanana — If ingress to such place cannot be obtained under Section 47 it shall be lawful in any case for a person acting under a warrant and in any case in which a warrant may issue, but cannot be obtained without affording the person to be arrested an opportunity of escape, for a police-officer to enter such place and search therein, and in order to effect an entrance into such place, to break open any outer or inner door or window of any house of any other person, if after notification of his authority and purpose, and demand of admittance duly made, he cannot otherwise obtain admittance :

Provided that, if any such place is an apartment in the actual occupancy of a woman (not being the person to be arrested) who, according to custom does not appear in public such person or police-officer shall, before entering such apartment, give notice to such woman that she is at liberty to withdraw and shall afford her every reasonable facility for withdrawing and may then break open the apartment and enter it."

52. "Mode of searching women. Whenever it is necessary to cause a woman to be searched, the search shall be made by another woman, with strict regard to decency."

10. **Scope and object of Sec. 10 (7) :** Section 10(7) comes into play only when samples are taken. It is introduced by way of guarantee that the Sanitary Inspector has taken the particular sample from the accused (a).

It is absolutely essential that the officers conducting investigation bear in mind the provisions of Section 103 Cr. P.C. This section contemplates that before a search is made, the officer concerned will call upon two or more respectable inhabitants of the locality in which the place to be searched is situate to attend and witness the search. It does not mean that the investigating officers

(a) Public Prosecutor Vs. Sami Venkatraman — A.I.R. 1958 Mad. 382 = 71 Mad. L. W. 248 = 1958 Mad. L.J. (Cr.) 236.

can have two or three people accompanying them every where they go for searches. As far as possible, the provisions of the section should be complied with (b).

In dealing with evidence of search which is illegal the court would have to examine the evidence very carefully, eliminate the possibility that the search may have been the result of private malice, and then decide whether the search and the evidence relating to the discovery of incriminating material has been proved beyond reasonable doubt. But it would be going too far to hold that only because the search is illegal the accused must be acquitted (c).

Assuming that the witnesses who actually witnessed the search were not respectable inhabitants of the locality, that circumstance would not invalidate the search. It would only affect the weight of the evidence in support of the search and the recovery. Hence at the highest the irregularity in the search and the recovery in so far as the terms of S. 103 had not been fully complied with would not affect the legality of the proceedings. It only affects the weight of evidence which is a matter for Courts of fact (d).

What is really intended by S. 103 Cr. P. Code is that it should be strictly followed to the extent it is possible to ensure that the incriminating articles were recovered as alleged and it leaves no room for doubt. The reason is that it forms a material part of the evidence that it is necessary in matters of conviction for alleged possession of incriminating articles. If the search is defective it cannot be said that ipso facto the evidence as to the search is inadmissible and case based upon the search must necessarily fail. The evidence as to recovery of articles is not inadmissible, nor the conviction based upon such evidence illegal but what is required is that it may only be reasonable to view with more than ordinary caution evidence of those persons who made the illegal search (e).

11. Compliance with section 10 (7) essential: The procedure of section 10 (7) must be complied with in every case by the Food Inspector. The expression as far as possible is intended to obviate the necessity of the witnesses if the circumstances under which he takes the sample were such that there could not possibly

(b) Public Prosecutor Vs. Venkata Schalamaiah—1956 Andh. L.T. 827 =1956 Aadh. W. R. 915.

(c) State Vs. Raoji—1956 Cr. L.J. 981=A.I.R. 1956 Bom. 528. (D.B).

(d) Sunder Singh Vs. State of U. P.—A.I.R. 1956 S.C. 411=1956 Cr. L.J. 801.

(e) Lal Bahadur Vs. State—A.I.R. 1956 Assam 74=1957 Cr.L.J. 502=I. L. R. (1957) 7 Assam 443.

be two persons present at the time; as for example in a solitary place at a late hour. It does not mean that when witnesses are available the inspector can dispense with them. The provision has been enacted as a safeguard to the accused because a severe punishment is prescribed for a second offence and the need to follow strictly the procedure under the Act is all the greater in such cases (f).

✓(12) **Necessity of the presence of owner or occupant at the time of search.** The provisions of S. 103 have been enacted with the wholesome object of ensuring that the occupant should not feel that the search was conducted otherwise than in accordance with law. They would also provide a check against what may be described as the activities of agent provocateur. Therefore it is the duty of the police officer conducting the search to permit the occupant of the place or some one on his behalf to attend during the search. It is only in those cases in which the delay caused in procuring the attendance of the occupant might frustrate the object of the search that the police would be justified in dispensing with his presence and conducting the search in the presence of some one on his behalf.

Where therefore the accused was in the custody of the police and there was no difficulty in taking him to witness the search and yet the search was made in the presence of his wife :

Held that it could not be said, under the circumstances that the wife represented him during the search. Even if the letter of the law was satisfied, the law was broken in spirit (g).

Where the accused persons who were inside the room searched by the police were, after the discovery in their presence of a gun and after search of their persons, sent out of the room and the search was continued.

Held : that the Code of Criminal Procedure permits the occupants of the place searched to be present at the search and there was therefore a violation of this rule which is one not merely of technicality but of substance in that it is enacted to guarantee the reality of the search and the discoveries made thereat.

That this was an irregularity which the accused were entitled to ask the Court to consider and which made it incumbent on the Court to scrutinise the evidence carefully(h).

(f) Raju Konar In re (1958) M. L.J. (Cr) 697=(1958) 2 M.L.J. 194.

(g). Bhagu Ranchhod Vs. State—A.I.R. 1955 Saurashtra 4.=1955 Cr. L.J. 31.

(h). Romesh Chandra Vs. Emperor—A.I.R. 1914 Cal. 456=41 Cal. 350=23 I.C. 985=18 C.W.N. 498=15Cr. I.J.385

Beachcroft, J. in the above judgement (h).—The spirit of Section 103, sub-Section 3, is that the occupant of the place searched shall be present and it means that he is to be given the option of being present and not that he is to be allowed to be present only if he demands it. But the right of presence given by S 103 applies only to the occupant of the place searched or some person on his behalf, and the words "occupant of the place" are not intended to cover every person who may happen to be in the place at the time but they refer back to the person mentioned in S 102 i.e. a person residing in or being in charge of the place.

However in a more recent judgement it has been held that it is not necessary that the person whose premises are searched must be present at the search (i).

(13) **Locality**:—The word "locality" used in S. 103 Cr. P.C. is comprehensive word and may well include villages within three or four miles of the village where the search is to be conducted (j).

Merely because a person has acted as a search witness in a previous case or is living in a place about 3 furlongs from the house of the accused, he is not disqualified from acting as a search witness in a subsequent case (k).

The search of the person of the accused was made on a metalled road and no where near a town, and thus it was not possible to obtain as witnesses any persons from immediate vicinity. However the Excise Inspector has taken a physician with him. Held that even though the Inspector ought to have taken some other persons in addition to the physician, an irregularity of this sort can be no bar to the conviction if the court is satisfied that the smuggled article was in fact found in the possession of the accused (l).

In a search conducted under section 103, it is immaterial from what quarter witnesses are drawn so long they are respectable men. The word "Locality" in that section does not mean the same quarter of the town as the place which is searched. In fact the stress is on the word "Respectable" and not the word "Locality" (m).

(i). Hari Narayan Vs. Emperor—A.I.R. 1928 Cal. 27=46 C.L.J. 368=29 Cr. L.J. 49=106 I.C. 545=9 A.I. Cr. R. 228 (View of Beachcroft, J.—in 41 Cal. 350. diss. from).

(j). Emperor Vs. Mast Ram—A.I.R. 1931 Oudh 115.=8 O.W.N. 128=1931 Cr. C. 275=131 I.C. 441=32 Cr. L.J. 699=6 Luck. 472=16 A.I. Cr. R. 209.

(k). Mahadeo Prasad Vs. Emperor—A.I.R. 1934 Oudh 90=11 O.W.N. 62=1934 Cr. C. 260=9 Luck. 355=147 I.C. 317=35 Cr. L.J. 397=1934 C.L.R. 109.

(l). Emperor Vs. Bachcha—A.I.R. 1934 All. 873=15 L.R.A. Cr. 110=21 A.L. Cr. R. 209=1934 Cr. C. 1082=153 I.C. 472=1935 All. L.R. 19.

(m). Ghada Lal Vs. Emperor—A.I.R. 1934 Sindh 159=1934 Cr. C. 1261=28 S.L.R. 41. See also 1932 Pat. 66.

The word locality in S. 103 Cr. P. C. does not mean the same quarter of the town as the place which is searched(*n*).

In S. 103 the words "shall call upon two or more respectable witnesses of the locality" as far as the word 'locality' goes must be regarded as directory rather than mandatory. Therefore, where it is found that only one witness comes from immediate neighbourhood and the other comes from some little distance it cannot be held that the search is on that account illegal(*o*).

The word locality has not been defined and in Malabar where houses are situated furlongs from one another there is nothing wrong in a man living at some distance being chosen as a search witness(*p*).

Where the witnesses present at the time of search of accused's house deposed that opium was found in the accused's house at the time of search and such witnesses lived in a village two or three miles away from the village of the accused: Held that the mere fact that the witnesses did not come from the immediate vicinity could not justify the court in rejecting the evidence that opium was found in the accused's house at the search(*q*).

The provision that the witnesses of the search should be inhabitants of the locality is intended to operate in favour of the accused and in a densely populated town means persons in the immediate vicinity(*r*).

It is not necessary that the person whose premises are searched must be present at the search (*s*). (View of Beachcroft J. in 41 Cal. 350 diss. from).

The conviction or acquittal depends upon the credibility of the witnesses as assessed by the court and not on the question whether their presence on the scene of the alleged offence was in accordance with a particular legal procedure. The failure to comply with the provisions regulating searches may cast doubt upon the bonafides of the officers conducting the search. But once the evidence has been believed it is obviously no defence

(*n*). A.H. Sein Vs. Emperor 12 I.C. 87=12 Cr. L.J. 479 A.H. Pok V. Emperor 1917 L.C. 91=42 I.C. 753=18 Cr. L.J. 109.

(*o*). Crown Vs. Darshan Singh--43 P.L.R. 536=A.I.R. 1941 Lah. 297= I L.R. 1941 Lah. 370=196 I.C. 106=42 Cr. L.J. 812.

(*p*). The Public Prosecutor Vs. Devassia--A.I.R. 1952 Mad. 604.

(*q*). Nga Shwa Toe Vs. Emperor--A.I.R. 1937 Rang. 434.

(*r*). Ma Htway Vs. King Emperor--A.I.R. 1925 Rang. 205 (1)=4 Cr. L.J. 2=86 I.C. 475=26 Cr. L.J. 927.

(*s*). Hari Narayan Vs. Emperor--A.I.R. 1928 Cal. 27=46 C.L.J. 368=29 Cr. L.J. 49=106 I.C. 545=9 A.I. Cr. R. 228.

to say that the evidence was obtained in an irregular manner. There is nothing in the law which makes such evidence inadmissible. Hence, where a person is convicted under Excise Act for possession of illicit liquor, were fact that search witnesses were not from the same locality would not entitle him to acquittal (1).

The object of S. 103 of the Code of Criminal Procedure in requiring that respectable inhabitants of the 'locality' should be called to witness the search, is to ensure that false evidence may not be fabricated. The important point is that the men called in should be persons of some standing whose word can be believed not that they should be persons living within a stones throw of the house which is to be searched; the stress is on the word 'respectable' and not on the word 'locality'. Therefore, for the purposes of S. 103 a person living in a quarter within hail of the place to be searched may reasonably be regarded as an inhabitant of the locality, even if a river flows between(u).

14. Presence of search witnesses desirable though not essential—Absence will weaken the case: The presence of witnesses at a search is always desirable and their absence will weaken and may sometimes destroy the acceptance of the evidence as to the finding of the article. (v)

Where witnesses are available food inspector is bound to call them otherwise there can be no conviction in spite of the report of the Public Analyst showing milk to be adulterated (w)

15. Who are respectable witnesses? Respectability of a witness does not connote any particular status or wealth or anything of that kind. Any person is entitled to claim respectability provided he is not disreputable in any way (i.e. he is not a thief or a criminal of some kind or a person perhaps of grossly immoral habits). Having been a prosecution witness is not sufficient to deprive one of one's title to respectability (x)

A dismissed constable can hardly be described as a respectable

(1) *Bonnamy Vs. Emperor*—A.I.R. 1940 Cal. 85—I.L.R. 1939—1 Cal 210—186 I.C. 471—41 Cr. L.J. 316.

(u) *Emperor Vs. Sit Nyein* 81 C. 988—3 Bur. L.T. 143.

(v) *Malik Khan Vs. Emperor*—A.I.R. 1945 P.C. 16—1945—2 M.L.J. 486—1945 M.W.N. 778—54 Cal. W.N. 145—59 M.L.W. 9—1945 A.L.J. 29—222 I.C. 213—71 A. 395—12 B.R. 290—1945 A.W.R. P.C. 10—45 B.L.R. 132—1946 Pesh. L.J. 2. 16—47 Cr. L.J. 484—I.L.R. (1946) Lab. 1.

(w). *Raju Kumar Alias Swaminatha Kumar, Cr. Revision Case No. 78 of 1958* decided on 24th March 1958 (Madras High Court).

(x) *Ashraf Vs. Emperor*—A.I.R. 1936 All. 307—129 A.L.J. 918—1936 Cr. L.C. 893—1936 A.W.R. 731—165 I.C. 25—1936 All. L.R. 88—27 Cr. L.J. 1105.

person within the meaning of section 103. (y)

So also a man who has been twice convicted of serious crimes is not a respectable inhabitant and is altogether unsuitable as a search witness (z)

Where both the search witnesses were found on their own admission to have been previously convicted of criminal offences and one of the search witnesses further admitted that he had a civil suit with the accused, it was held that the manner of search amounted to violation of law and the accused was acquitted under such circumstances (a)

Where the only witnesses to the search were the village Mukhia and the chaukidar of the village, it was held that the search was not conducted in the presence of two respectable persons of the vicinity. S. 103 Cr. P. C. provides that before making a search the person about to make it shall call upon two or more respectable inhabitants of the locality in which the place to be searched is situate to attend and witness the search. The officer so authorized to make a search is to exercise the very greatest caution in fulfilling the formalities required by law for making a search and providing every possible safe-guard so as not to allow any handle for adverse criticism. Under circumstances it was held that the proper safe-guards were not provided in the present case. (b)

"Respectability" means much the same thing as impartiality, the presumption being that all respectable people are prima facie impartial. There is no sufficient reason for holding that ward headmen as a class should not be regarded as impartial. (c)

It is objectionable to be calling the same persons to witness searches. (d)

It cannot be said that men of modest means or belonging to communities which are not considered to be very high are not respectable witnesses. (e)

(y) Indar Datt Vs. Emperor—A.I.R. 1931 Lah. 408=132 I.C. 135=1331 Cr. C. 648=32 Cr. L.J. 818=16 A.I. Cr. R. 190.

(z) Ramchandra Vs. Emperor—A.I.R. 1935, All. 520=1935 All. L.R. 219=1935 A.W.R. 313=154 I.C. 635=36 Cr. L.J. 551=1935 Cr. C. 544.

(a) Haradhan Maitty Vs. Emperor—A.I.R. 1938 Cal. 701=173 I.C. 409=1938 Cr. L.J. 52.

(b) Faqira Vs. Emperor A.I.R. 1929 All. 901 (2)=120 I.C. 294=31 Cr. L.J. 10=1929 Cr. C. 493=11 L.R.A. Cr. 15=13 A.I. Cr. R. 131.

(c) Emperor Vs. Kanhaw 10 I.C. 74=4 Har. L.T. 91 (F.B).

(d) Aung Kim Sein Vs. The King—A.I.R. 1941 Ran. 313=41 R.L.R. 552=1941 I.C. 580.

(e) Kanwar Lal Vs. The State—A.I.R. 1955 N.U.C. 2174 (Rajasthan).

16. Search memo :—Search lists are made for the purpose of fastening possession of article on a particular person. Therefore separate search should be made with respect to each person and, the persons who are sought to be made liable with the help of search list, should be asked to sign the search list. The failure of the officer to observe these elementary precautions renders the search list useless (f)

It may not always be possible to make a search memo on the spot especially when a certain recovery is made in an uninhabited place. The fact that the search memo was made at a different place does not materially affect the case when the attesting witnesses to the search memo are the same in whose presence the recovery was made. (g)

(17) Provisions regarding witnesses salutary:—Prosecution to prove compliance was not possible. Where the provisions of Sec. 103, Cr. P. C., which are very salutary provisions for the protection of the interest of an accused person are departed from, the burden lies on the prosecution to explain the circumstances under which it was not possible to comply with those provisions. Where there is no evidence to prove that respectable witnesses were not available in the locality or that the witnesses residing in the locality were unwilling to come forward as search witnesses on account of the greater influence of the accused, a search, in which both the witnesses were from different locality, one being the driver of the truck leading the police party to the place of the raid and both were not very respectable, was held illegal and as there was other evidence also to show prejudice to the accused the trial was held vitiated by illegality(h).

(18) Absence of search for local witnesses not fatal, if object of search would have been frustrated:—Witnesses not from locality—Search held not necessarily vitiated especially where object of search would have been frustrated. Where the sub-inspector had no time to go to the village or to the station and to collect men from there for the purpose of effecting a search. In cases where such a raid is contemplated, it is usual for the police officer to take witnesses along with him so that they may serve as search witnesses when the occasion rises. Under such

(f) Chandrama Prasad Chamar Vs. State—I.L.R. (1951) 1 Cal. 539. (D. B).

(g) Kanwar Lal Vs. The State A.I.R. 1955 G.U.C. 2174.

(h) Bishnath Rai V. Rex. Cr. Rev. No. 322 of 1949 dated 21-6-49 (All.)

circumstances if he goes to look for independent witnesses the very purpose of search might be defeated. A search is not vitiated by non-compliance with the provisions of S. 103, Criminal P.C. a breach of which will only put the Court on guard and incline it to scrutinise evidence of witnesses more closely. The effect of such irregularity will, however, depend on the circumstances of each particular case. In view of the special circumstances and the difficulty in which the Circle Inspector was placed, the conduct of search by him with the aid of the search witnesses available to him at the time cannot be characterised to be in any way improper: and cannot, in any case, have the effect of sweeping away the results of such a search(i).

19. No attempt to secure respectable witnesses of locality—Effect : Search witnesses coming from localities different from where search was carried out—No attempt to secure respectable persons from locality to witness search—Search held not good one and could not form basis of prosecution (a)

Where the provisions of S. 103, Cr. P. Code, which are very salutary provisions for the protection of the interests of an accused person, are departed from, the burden lies upon the prosecution to explain the circumstances under which it was not possible to comply with those provisions. Where there is no evidence to prove that respectable witnesses were not available in the locality or that the witnesses residing in the locality were unwilling to come forward as search witnesses on account of the greater influence of the accused, a search, in which both the witnesses were from different locality, one being the driver of truck leading the police party to the place of the raid and both were not very respectable. The search was held illegal and as there was other evidence also to show prejudice to the accused, the trial was held vitiated by the illegality (b).

The provisions of S. 103 are mandatory, designed to guard against possible chicanery and unfair dealings and must be strictly complied with. Every departure does not however, render the search illegal. But unless an explanation is given of the omission to secure respectable inhabitants of the locality as witnesses, the Court will view the evidence with deep suspicion. (c)

(i) Swami Dayal Vs State—A.I.R. 1953 All. 353.

(a) Dr. Jai Nand Vs Rex—A.I.R. 1949 All 291=50 Cr. L.J. 493=1949 A.W.R.H.C. 13=1949 A.L.J. 60.

(b) Bishnath Rai Vs Rex—Cr. Revn. No. 322 of 1949 dated 21-6-49 (All.)

(c) Beoparia Vs State of Ajmer—A.I.R. 1955 Ajmer 10=1955 Cr. L.J. 595=1954 A.M.L.J. 129.

Where in a search an excise officer does not even attend to call the respectable inhabitants of the locality to witness the search and instead, brings certain persons from other place to act as witnesses, there is a complete disregard of the provisions of S. 103 Cr. P.C. This irregularity in search may not affect the guilt of the accused but it opens the door for the argument that the court below not having approached the evidence from the that point of view, it should be reviewed by the High Court in revision in order to consider if the prosecution evidence establish the applicant's guilt without reasonable doubt (d).

Failure to call respectable witnesses may affect the value of the search but will not render the search void. The provision is directory or not mandatory (e).

Non-observance of the provisions as to independant search witnesses. Benefit of doubt should be given to the accused (f).

(20) Evidence of search not in-admissible for non compliance of the provisions of Sec. 103 Cr. P. C. Non-compliance with the strict provisions of sections 103 and 165 does not make the evidence as to the result of search inadmissible (g).

Although the failure to comply with the provisions regulating searches may cast doubt upon the bonafides of the officers conducting the search, there is nothing in law which makes evidence relating to an irregular search inadmissible and a conviction based upon such evidence is not invalid on that ground alone (h).

(21) Section 10 (3). Under this clause the food inspector who has taken sample of an article of food under clause (a) of sub-section (1) or under sub-section (2) is bound to pay its cost calculated at the rate at which the same is usually sold to the public, to the person from whom the sample is taken.

(22) The effect of non payment of price. The question arose in a case under the Behar Prevention of Food Adulteration Act, 1947 (V of 1948). There the Sanitary Inspector took the sample and did not pay the price nor promised to pay the same and it was held that a transaction which can be described as purchased can only be based on passing of consideration and so when

(d) Tittar Vs State—1953 All. W.R. (H.C) 159=1953 All. L.J. 248 =1953 Cr. L.J. 1181=A.I.R. 1953 All. 506.

(e) Ganga Ram Vs The State—A.I.R. 1955 N.U.C. (Madhya Bharat) 3862.

(f) Sultan khan Vs The State—A.I.R. 1955 N.U.C. (Cal). 2951.

(g) Indu Bhusan Vs State—A.I.R. 1955 Cal. 129=1955 Cr. L.J. 433 (D.B.)

(h) Ramrao Vs State—A.I.R. 1951 Nag. 237=1952 Nag. L.J. 20=I.L.R. (1951) Nag. 349.

the Sanitary Inspector did not actually pay any price as the accused did not accept it and there is no evidence that he promised to pay the price in future, the transaction cannot be held to be a purchase (i).

(23) **Sec. 10 (1) (c).** Under this clause the food inspector is given power to prohibit the sale of any article of food in order to prevent the out-break or spread of any infectious disease but he can do so only after obtaining the approval of the Health Officer having jurisdiction in the local area concerned, or with the previous approval of the Food (Health) Authority.

The Food (Health) Authority has been defined in Sec. 2 (vi) to mean the Director of Medical and Health Services or the Chief Officer in charge of Health Administration in a State by whatever name he is called.

Further powers have also been given to the Food Inspector to deal with carriers of disease handling food, under the rules framed by the Central Government.

Rule 13 Power of Food Inspector to deal with carriers of disease handling food—

(1) Where the Food Inspector is of the opinion that any person engaged in selling or manufacturing any article of food is suffering from or harbouring the germs of any infectious disease, he may examine or cause to be examined such person;

Provided that where such is a female above the age of eight years she shall be examined by a woman duly authorised by the Food Inspector.

(2) If on such examination the Food Inspector finds that such person is suffering from any such disease, he may by order in writing direct such person not to take part in selling or manufacturing any article of food.

24. Section 10 (4):—Under this clause whether the Food Inspector takes sample under Sec. 10(1) & 10(2) or not, he is given the power :

- (i) to seize, carry away or
- (ii) to keep in safe custody of the vendor.

An article of food provided it appears to him to be adulterated or mis-branded in order that it may be dealt with as hereinafter provided. But before he can seize an article of food he must have reasonable ground of suspicion or before he can com-

(i) Ramjee Prasad V The State--A.I.R. 1955 N.U.C. 451 A (Pat).

mit any other act concerning the said article of food he must have reasonable ground of belief that such act is necessary for execution of his duty [Sec 10 (9)]. After he has exercised the powers under Sec. 10 (4) he is bound to produce the said article of food seized by him before a magistrate as soon as possible and in case he has taken sample also of the same and has sent it to the Public Analyst for analysis he is bound to produce it before the magistrate after receipt of the report of the Public Analyst [Sec. 11 (4)].

The Central Government has framed rules No. 10 and 11 concerning the form of order not to dispose of stock and the form of receipt to be given by him for food seized, which rules are given below.

10. Form of order not to dispose of stock—Where the food inspector decides to keep under sub-section (4) of Section 10 of the Act in the safe custody of the vendor any stock of food which appears to him to be adulterated or misbranded, he shall after sealing the stock make an order to the vendor to that effect in Form IV, and the vendor shall comply with such order.

11. Form of receipt for food seized by a food inspector—For every article of food seized and carried away by a food inspector under sub-section (4) of Section 10 of the Act, a receipt in Form V. shall be given by the food inspector to the person from whom the article was seized.

Note :— From IV and V are given in the appendix.

25. Section 10 (9):—Under this clause a food inspector exercising powers under this Act or under the rules made thereunder is guilty of an offence under this Act and is punishable for such offence with fine which may extend to Rs. 500/- in case :—

- (a) he vexatiously and without any reasonable grounds of suspicion seizes any article of food ; or
- (b) commits any other act to the injury of any person without having reason to believe that such act is necessary for the execution of his duty.

26. Vexatiously without any reasonable ground of suspicion or belief :—Under Sec 10 (9) sub clause (a) a food inspector is guilty of the offence only when he seizes an article of food and he does so vexatiously and without any reasonable grounds of suspicion. This power of seizing is given to him u/s 10 (4) but he cannot use these powers unless there are some reasonable grounds of suspicion that the article of food in question is adulterated or misbranded.

27. Vexatious :—The word vexatious implies that the accusation is one that ought not have been made and is intended to harass or annoy the accused. There is also element of falsehood in the charge to make it vexatious(a).

The term frivolous or vexatious covers a deliberately false case. A vexatious charge may be partly true but the idea conveyed by the word is that the object of the person making the accusation should be primarily to harm the person accused(b).

A false accusation of rape against a person is certainly vexatious to the person accused(c).

An accusation cannot be said to be vexatious unless the main intention of the complainant was to cause annoyance to the accused and not merely to further the ends of justice d).

28. Without any reasonable grounds of belief or suspicion:— Both the belief and suspicions must be based on reasonable grounds. In other words there must be reasonable and probable ground for such belief or suspicion (e).

The important question is whether the facts as known to the defendant and reasonably believed in by him at the material time, constituted a reasonable cause for the suspicion(e).

29. "Reasonable and probable cause" means a genuine belief based on reasonable grounds, that the proceedings are justified.e)

The question of reasonable and probable cause depends on the facts as known to the defendant who initiated the prosecution. When the fact upon which the prosecutor acted have been ascertained and when the facts operating on the prosecutor's mind at the time of the prosecution are known, then the court has to determine whether those facts afforded reasonable and probable cause for prosecuting the accused. If these facts do afford reasonable and probable cause then the prosecution would be justified and it would not as a rule be necessary for an inquiry to be made into the prosecutor's belief. The state of his belief goes to malice but not, as a rule to reasonable

(a) Beni Madhub Kurmi Vs Kumud Kumar Biswas--I.L.R. 30 Cal. 123 (F.B).=6 C.W.N. 799.

(b) Bakaji Vs. Mukand Singh--A.I.R. 1920 Nag. 108=3 N.L.J. 106=55 I.C. 98=21 Cr. L.J. 226.

(c) Mst Daropadi Vs. Parsram--1924 Lah. 19=42 P.L.R. 678=192 I.C. 295=42 Cr. L.J. 266.

(d) Emperor Vs. Kourojumo--A.I.R. 1917 Sindh 73=42 I.C. 733=18 Cr. L.J. 1005=11 S.L.R. 55

(e) S.T. Sahib Vs Hasan Ghani Sahib--A.I.R. 1957 Mad. 646.

and probable cause. (f)

The expression without reasonable or probable cause means an honest belief in the guilt of the accused based upon full conviction, founded upon reasonable grounds of the existence of a state of circumstances, which, assuming them to be true, would reasonably lead any ordinary prudent and cautious man, placed in the position of the accuser, to the conclusion that the person charged was probably guilty of the crime imputed. There must be: first, an honest belief of the accuser in the guilt of the accused; secondly, such belief must be based on an honest conviction of the existence of the circumstances which led the accuser to that conclusion: thirdly, such secondly mentioned belief must be based upon reasonable grounds; i.e. such ground as would lead any fairly cautious man in the defendant's situation so to believe; fourthly, the circumstances so believed and relied on by the accuser must be such as to amount to reasonable ground for belief in the guilt of the accused. (g)

Unless the person making a charge actually knows that there is no just, or lawful ground for it, he is not guilty of the offence, and cannot properly be convicted of it. It is not enough to find that he has acted in bad faith.

Reasonable and probable cause:—The plaintiff must give some evidence of the want of reasonable and probable cause before the defendants can be called upon to show the existence of such a cause (h).

When the plaintiff has given such evidence as, if not answered, would entitle him to succeed, the burden shifts to the defendant to establish the contrary(i).

Reasonable and probable cause is an honest belief in the guilt of the accused based on a full conviction, founded upon reasonable grounds, of the existence of a state of circumstances, which, assuming them to be true, would reasonably lead any ordinarily prudent and cautious man, placed in the position of the accuser, to the conclusion that the person charged was probably guilty of the

(f) Baldeo Singh Vs. Piare Lal—A.I.R. 1956 Madh. B. 32=1955 Madh. B. L. J. 1445=I.L.R. 1955 M B. 137=Madh. B.L.J. 1955 (H.C.R. 259)=Madh B.L.R. 1955 Civil 373=A.I.R. 1958 Madh. B. 32. (1951 1—All. E.R. 814 and (1952) 1—All. E.R. 1. rel. upon).

(g) Per Hakins, J., in Hicks Vs. Faulkner 1878 8 Q.B.D. 167, 171.

(h) Abrath Vs. North Easter Ry. Co., (1883) 11 App. Cas. 247, 11 Q.B.D. 440; Raghunathrao Vs. Motiram, (1933) 30 N.L.R. 101; Basdeo Vs. Shyama Charan (1936) A.L.J. 803; Mangal Vs. Maiku, (1937) O.W.N. 226; Bhawani Shankar Vs. Raghubar Dayal, (1937) A.L.J. 331; Lord Goxindoss V. Arumuga Mudali, (1937) 46 L.W. 680.

(i) Surendra Nath Vs. Bindu Bhuson (1943) 48 C.W.N. 12.

crime imputed. There must be first, an honest belief of the accuser in the guilt of the accused ; secondly, such belief must be based on an honest conviction of the existence of the circumstances which led the accuser to that conclusion ; thirdly, such secondly mentioned belief must be based upon reasonable grounds, that is such grounds, as would lead any fairly cautious man in the defendant's situation so to believe ; fourthly, the circumstances so believed and relied on by the accuser must be such as amount to a reasonable ground for belief in the guilt of the accused (j).

All that the defendant has to be satisfied about is that there is reasonable and probable cause for the charge, *i.e.* reasonable grounds for believing that the plaintiff is guilty of the offence and not reasonable grounds for coming to the conclusion that the court would convict him on it (k). In order to justify a defendant there must be a reasonable cause,—such as would operate on the mind of a reasonable man at all events such as would operate on the mind of the party making the charge ; otherwise there is no probable cause for him (l). The test which has received the most approbation is partly abstract and partly concrete. Was it reasonable and probable cause for any discreet man ? Was it so to the maker of the charge ? (m) Mere circumstances of suspicion cannot be relied on as evidence of reasonable and probable cause (n)

The prosecutor's belief in the guilt of the accused must be based on grounds which, or some of which, are reasonable and arrived at after due inquiry(o). It is not required of any prosecutor that he must have tested every possible relevant fact before he takes action. His duty is not to ascertain whether there is a defence, but whether there is reasonable and probable cause for a prosecution (p). If there is reasonable and probable cause for

(j) Hicks Vs. Faulker. (1878) S Q. B.D. 167, 171 ; Lister Vs. Perrman. (1870) L.R. 4 H.L. 521 ; Herniman Vs. Smith (1953) A.C. 305 ; Bhim Sen Vs. Sita Ram (1902) 24 All. 363 ; Shama Bibee Vs. Chairman of Parangore Municipality, (1910) 12 C.L.J. 410 ; Chatra Serampore Cooperative Credit Society Vs. Becha Ram Sarkar (1239) 1 Cal 123 ; Na Aw Vs. Maung San The in, (1899) 6 Burma L.R. 153 Vogiazis Vs. Pappademitrious, (1912) 6 B.L.T. 59

(k) Vydinadier Vs. Krishnaswami Iyer, (1911) 36 Mad. 357 ; Perozshah Vs. Woutery, (1902) P.R. No. 60 of 1902, ; Faghfur Mirza Vs. Bhagwati Parshad (1895) I.O.D. 786 ; Pannar Vs. Khunnu, (1936) A.L.J. 256.

(l) Per Tindal C.J. in Broad Vs. Ham, (1839) 5 Bing. N.C. 722, 725.

(m) Per Holloway, C.J. in Goday Narain Vs. Shri Ankitam Venkata, (1871) 6 M.H.C 85 Dwarka Das Vs. Harihar Dat (1884) 4 A.W.N. 1.

(n) Busst Vs. Gibbons, (1861) 30 L.J. Ex. 75, followed in Ahemedbhai Vs. Franji, (1903) 5 Bom. L.R. 940. 28, Bom. 226.

(o) Jamnadas Vs. Chunilal, (1920) 22 Bom. L.R. 1207, 1211.

(p) Herniman Vs. Smith, (1938) A.C. 305.

the prosecution no question of malice arises, because the existence of reasonable cause in the mind of the plaintiff is sufficient, whatever his motive may have been to enable him to justify the proceedings he brings or the prosecution he starts (q).

The plaintiff no doubt in proving absence of reasonable and probable cause has to prove a negative, and in general need only give slight evidence of such absence, but it cannot be inferred from the most express malice. The burden of proof, therefore, is not stationary. When the plaintiff has given such evidence, which, if not answered, will entitle him to a decree, the burden of proof is shifted to the defendants. If facts existed, which, if known to the defendant, would have constituted reasonable and probable cause the burden of proving that they were not known to him would lie on the plaintiff.

As far as the issue of want of reasonable and probable cause is concerned, a mere scintilla of evidence would not warrant the Court in finding a verdict for the plaintiffs; for there must be so much evidence that a reasonable man might accept it as establishing the issue.

The amount and nature of evidence required to fulfil the initial burden depends upon the facts and circumstances of each case (r).

Reasonable and probable cause is an honest belief in the guilt of the accused based upon a full conviction, founded upon reasonable grounds, of the existence of a state of circumstances, which, assuming them to be true, would reasonably lead any ordinarily prudent and cautious man, placed in the position of the accuser, to the conclusion that the person charged was probably guilty of the crime imputed. It is well settled that question of the absence of reasonable and probable cause is for the Judge. At the same time it is clear that the question is one of fact and not of law (r).

The plaintiff, therefore, must prove that the facts and circumstances of the case at the time of the offence were such as to be in the eyes of the Judge inconsistent with the existence of reasonable and probable cause.

The question of reasonable and probable cause depends in all cases not upon the actual existence, but upon the reasonable bona-fide belief in the existence of such a state of things as would amount to a justification of the course pursued in making the accusation complained of, no matter whether this belief arises out of the recollection and memory of the accuser or out of information furnished to him by others (r).

(q) Sumai Prasad Vs. Ram Sarup, (1945) All. 685, 693.

(r) Nagindra Kumar Vs. Etwari Sahu—1957 B.L.J R. 546=I. L. R. 36. Pat. 786=A.I.R. 1958. Pat. 329.

A man is not bound before instituting proceedings to see that he has such evidence as will be legally sufficient to secure a conviction. Neither is it necessary that the defendant should act only on legal evidence, and inquire into every thing at first hand. It is sufficient if he proceeds on such information as a prudent and cautious man may reasonably accept in the ordinary affairs of life; and it is for the plaintiff to show that there was a want of proper care in testing that information(r).

It may not be justifiable to commence a prosecution on mere suspicion. But there may be cases where there is quite clearly reasonable and probable cause in the mind of a man who has a spiteful motive as against the man whom he is prosecuting, but that does not seem to be fatal to his case, if the other facts proved that there was in existence that which he was entitled to regard as reasonable and probable cause for the prosecution. A man, therefore, may be prosecuted from a malicious motive, and, yet, at the same time, the prosecutor may have reasonable and probable cause for prosecuting(r).

It is never true that mere innocence is proof of want of reasonable and probable cause. Innocence per se does not, therefore, raise the presumption as to want of reasonable and probable cause. It must be innocence accompanied by such circumstances as raise the presumption that there was a want of reasonable and probable cause(r).

30. Question of reasonable and probable cause—Whether a question of law or fact :—The issue as to reasonable and probable cause is one of fact in the ordinary sense that it is a conclusion to be drawn from the fact, and circumstances of the case. The question is not one of mixed law and fact (s).

31. Section 10 (9) (a) :—In Sec. 10 (9) (a) the word used is suspicion and not belief—The word belief is very much stronger word than suspicion (t) But before the Food Inspector can be held guilty of an offence u/s 10 (9) (a) it must be proved that the Food Inspector seized the article of food without any reasonable ground which could create suspicion in his mind.

32. Sec. 10 (9) (b) :—Under this clause the food inspector is guilty only if he does any other act (other than seizing any article of food) to the injury of any person without having reason to believe that such act is necessary for the execution of his duty.

(r) See foot note on page 184.

(s) Kammala patti Vankatadri Vs. Pinninti Chandrayya A.I.R. 1956 Andh. 174=69 M.L.W. (Andh) 3=1956 Andh. W.R. 17 (A.I.R. 1939 Mad. 783=1939, 2 M.L.J. 296 not fol. 10 M.L.J. 300 (P.C.) and 36 Mad. 375=24 M.L.J. 515 & A.I.R. 1920 Mad. 252 and 1947 Mad. 236=1946, 2 M.L.J. 484. Fol.1)

(t) Emperor Vs. Rango Timaji—6 Bom. 402 I.L.R.=6 I.J. 538.

33. Injury :—This word is defined in Sec. 44 of Indian Penal Code as denoting “any harm whatever illegally caused to any person, in body, mind, reputation or property”

34. Reason to believe :—The commentary on these words has been given above.

35. Who can prosecute the Food Inspector for offence u/s 10 (9) under Section 20—No prosecution for an offence under this Act shall be instituted except by, or with the written consent of, the State Government or a local authority or a person authorised in this behalf by the State Government or a local authority :

So according to Sec. 20, the aggrieved party who suffers by the unlawful act of the food inspector cannot prosecute him of the offence alleged to be committed by him except with the written consent of the State Government or a local authority.

36. Civil remedy :—Whether the person aggrieved gets the required written consent of the State Government or a local authority for the prosecution of the food inspector or not ; he has got a civil remedy for damages.

Crown servants may be sued and made personally liable for tortious or criminal acts committed by them in their official capacity without showing malice or want of probable cause, unless that is of the essence of the tort or crime, and that State necessity or the orders of the Crown or of a superior officer cannot be pleaded in defence, except as an act of State in an action by a non-resident alien.

Thus where a village patel purporting to act under the provisions of the Essential Supplies (Temporary Powers) Act (1946) wrongfully seizes the paddy of a person, he is liable in tort for damages. The fact that the seizure was not actuated by malice but was carried out under the oral orders of his superior officer, *i. e.* Tahsildar, would not be sufficient justification for seizing the paddy and cannot be pleaded as a defence to a suit on tort (*u*)

In actions for tort against public officers, as in actions against private individuals, it is no defence that the tort was committed by order of the Crown or of a superior officer. (Halsbury's Laws of England, 2nd Edn. Page 267.)

If Government officials act within their powers, of course, they are not liable however much they may injure other people by

(u) Palthadi Venkappa Vs. Devamma—1956 Mad. 616=69 M.L.W. 526 = I.L.R. (1956) Mad. 1381=(1956) 2 M.L.J. 207.

their official acts. Any other rule would paralyse the Government of the country. But if they act outside their lawful powers, they are liable, although they cannot be sued as representatives of the Crown, unless the Crown consents to the proceedings against them, for the public revenues cannot be made liable without the Crown's consent to remedy wrongs committed by servants of the Crown. This may seem a hard rule for the person injured by the excess of authority, for, though the official is liable as a private individual, he is often not worth suing ... There are classical decisions that where an official has been sued in his private capacity, a plea of respondent superior will avail him nothing. On the other hand the rule that he cannot be sued as a representative of the Crown is strictly construed. [Winfield on the Law of Tort, page 91.]

How far the orders of a superior officer justify a subordinate who obeys them as against third persons has never been fully settled. But the better opinion appears to be that the subordinate is in the like position with an officer executing an apparently regular civil process, namely, that he is protected if he acts under orders given by a person whom he is generally bound by the rules of the service to obey, and of a kind which that person is generally authorised to give, and if the particular order is not necessarily or manifestly unlawful. [Pollock on Torts 14th Edn. page 96.]

*Note :—*The para of Pollock on Torts has been dealt with in 1956 Mad. 616, and it is said "that this opinion of the learned author is not with reference to all servants of the Crown but it is only with reference to acts done by Naval or Military Officers in the execution or intended execution of their duty, for the enforcement of the rules of the service and preservation of discipline, which require implicit obedience of the orders of the superior officer."

SECTION 11.

11. Procedure to be followed by Food Inspectors.
When a Food Inspector takes a sample of food for analysis, he shall—

- (a) give a notice in writing then and there of his intention to have it so analysed to the person from whom he has taken the sample ;
- (b) except in special cases provided by rules under this Act, separate the samples then and there into three parts and mark and seal or

fasten up each part in such a manner as its nature permits ; and

- (c) (i) deliver one of the parts to the person from whom the sample has been taken ;
- (ii) send another part for analysis to the Public Analyst ; and
- (iii) retain the third part for production in case any legal proceedings are taken or for analysis by the Director of the Central Food Laboratory under sub-section (2) of section 13, as the case may be.

(2) If the person from whom the sample has been taken declines to accept one of the parts, the Food Inspector shall send intimation to the Public Analyst of such refusal and there upon the Public Analyst receiving a sample for analysis shall divide it into two parts and shall seal or fasten up one of those parts and shall cause it, either upon receipt of the sample or when he delivers his report, to be delivered to the Food Inspector who shall retain it for production in case legal proceedings are taken.

(3) When a sample of any article of food is taken under sub-section (1) or sub-section (2) of Sec. 10, the Food Inspector shall send a sample of it in accordance with the rules prescribed for sampling to the Public Analyst for the local area concerned.

(4) An article of food, seized under sub-section (4) of Sec. 10, shall be produced before a Magistrate as soon as possible ;

Provided that in the case of any article of which samples have been sent to the Public Analyst for analysis it may be produced on or after the receipt of the report of the Public Analyst :

Provided further that if an application is made to the Magistrate in this behalf by the person from whom any article of food has been seized, the Magistrate shall by order in writing direct the Food Inspector to

produce such article before him within such time as may be specified in the order.

(5) If it appears to the Magistrate on taking such evidence as he may deem necessary that the article of food produced before him under sub-section (4) is adulterated, he may order it:—

- (a) to be forfeited to the local authority, or
- (b) to be destroyed at the cost of the owner or the person from whom it was seized so as to prevent its being used as human food, or
- (c) to be so disposed of as to prevent its being again exposed for sale or used for food under its deceptive name or
- (d) to be returned back to the owner for being sold under its appropriate name, after taking adequate guarantee from the owner.

(6) If it appears to the Magistrate that any such article of food is not adulterated the person from whose possession the article was taken shall be entitled to have it restored to him and it shall be in the discretion of the Magistrate to award such person from such fund as the State Government may direct in this behalf, such compensation not exceeding the actual loss which he has sustained as the Magistrate may think proper.

SYNOPSIS.

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| 1. Section 11 (1), (2), (3)-Procedure to be followed by Food Inspector. | of the Rules framed under Sec. 23. |
| 2. Quantity of sample to be taken for purpose of analysis. | 5. Absence of mediatorsnama and non-production in court of third part of the sample-effect. |
| 3. Notice to be given to the person from whom sample has been taken whether essential and obligatory? | 6. Section 11 (4) |
| 4. Effect of non-compliance of Rules No. 7, 15, 17 and 18 | 7. Effect of delay in producing the article seized before the magistrate. |
| | 8. Section 11 (5). |
| | 9. Section 11 (6). |

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| <p>10. Such evidence as the Magistrate may think necessary.</p> <p>11. Power of Magistrate to order destruction or other disposal of the article seized.</p> <p>12. Precautions must be taken while sending sample for analysis in case of milk and other articles capable of disintegration and radical change in composition.</p> | <p>13. Whether procedure was followed—presumption as to, if can be made?</p> <p>14. Liability of the Inspector destroying ghee seized as suspected to be adulterated but found by the Magistrate to be unadulterated and ordering its return and the limitation for suit.</p> |
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COMMENTARY

✓ (1) 11 (1), (2), (3) **Procedure to be followed by Food Inspector:**—When a Food Inspector takes sample of food for analyses he must—

- (i) give notice in writing (in Form VI) to the person from whom he has taken the sample, of his intention to have it analysed ;
- (ii) separate the sample then and there into three parts unless rules in a special case provide otherwise and mark and seal or fasten up each part in such manner as its nature permits ;
- (iii) deliver one part to the person from whom the sample is taken and the other part to the Public Analyst and retain the third part for production in case any legal proceedings are taken or for analysis by the Director of Central Food Laboratory, under Sec. 13 (2) as the case may be ;
- (iv) in case the person from whom sample has been taken refuses to accept one part of the sample the Food Inspector has to intimate the Public Analyst of such refusal and the Public Analyst in such a case is to divide the sample sent to him in two parts and is to seal or fasten up one of those parts which he is to send either upon the receipt of the sample or when he delivers the report to the Food Inspector who is bound to retain it for production in case legal proceedings are taken ;

Where a sample is taken u/s 10 (1) or 10 (2) the Food Inspector shall send the sample to the Public Analyst for the local area concerned in accordance with the rules prescribed.

These provisions apply even to a private purchaser also (see

section 12 proviso No. 2.) Rules regarding sealing, fastening and despatch of samples are given in Part V of the Rules framed by the Central Govt. under section 23 of the Act & are given in appendix and as well have been reproduced under section 10 and the relevant rules are No. 14 to 22 given under the heading "Procedure for sending samples to Public Analyst". The Form VI of the notice to be given by the food inspector at the time of taking sample is both given in the appendix containing the Rules as well as under section 10 under the heading "Notice required to be given by the food inspector for the purposes of taking samples, before the sample is actually taken".

✓ (2) **Quantity of sample to be taken for the purpose of analysis.** The quantity shall be three times the quantity of the sample which is to be sent to the Public Analyst as given in Rule 22 of the Rules given in the appendix under Part V, wherein is given the approximate quantity of the various articles of food of which sample is to be sent to the Public Analyst or Director of the Central Food Laboratory for analysis.

(13) **Notice to be given to the person from whom sample has been taken—whether essential and obligatory:—**Under Sec. 11 (1) (a) the Food Inspector taking sample of food for analysis is bound to give notice in writing in (Form VI) then and there of his intention to have it analysed to the person from whom he has taken the sample as is clear from the use of the word "shall" in Sec. 11 (1) (a)

The question directly arose in a case under the Bengal Food Adulteration Act (VI of 1919) and it was held that the person buying the articles is bound by the statute to notify to the seller of his intention to have the article analysed (a).

The notification required by Sec. 14 of the Bengal Act corresponding to Sec. 11 (1) (a) of the present Act has been held to be a condition precedent to a prosecution under the Act (b).

In England the position has all along been maintained that the notification of the intention by the buyer of the article to have the same examined by a public analyst is essential for sustaining a prosecution. There are many cases on the point, one of them in which that principle was accepted is the case in (1912) 1 K.B. 578 at page 584 and 586. The principle underlying the said requirement of the statute is to give an opportunity to the seller to see that the sample is fairly taken, to apprise the seller that the sample

(a) *Maindranath Vs. Jyotish Chander*—1937 Cal. 60=169 I.C. 251=I.L.R. 1937 I.—C. 765=38 Cr. L.J. 745 *Wheeler Vs. Webb*—(1887) 51 J.B. 661 and *Monro Vs. Central Creamer Company Ltd* (1912) 1 K.B. 578, Rel. on.

(b) *Barnes Vs. Chipp*—(1878) 3 Ex. D. 176=47 L.J. M.C. 85=26 W.R. 635=38 L.T. 510.

left with him may have to be preserved by him for future comparison and to give him an opportunity of having it analysed at his instance. S. II of the Indian Act and S. 14 of the English Act of 1875 and S. 18 of the English Act of 1928, however, use the words "shall forthwith notify to the seller or his agent selling the article his intention to have the same analysed"(c).

Even if the Sanitary Inspector who submits the samples to the Analyst is not authorized to exercise those powers in that particular place, samples submitted must be deemed to have been submitted for analysis under the Act, and the special rule of evidence contained in S. 14 under which the Public Analyst's certificate is made admissible in evidence without formal proof will apply. It is immaterial whether the Sanitary Inspector, be he regarded as an official or as a private individual obtained possession of the samples in strict accordance with the provisions of the Act or not. What is important is that the safeguards which the Act lays down in S. 11 should be complied with (d).

If an accused commits an offence under S. 5 of the Madras Act by offering adulterated ghee for sale, it does not cease to become an offence because of an omission on the part of the Sanitary Inspector to comply with the requirements of S. 15 in giving a notice in writing that he had taken the ghee for the purpose of analysis. Sec. 15 of the said Act has been enacted for the protection of the vendor, so that he himself might, if he so wished, have the ghee analysed privately and might be satisfied that it was really adulterated in the manner and to the extent indicated by the Public analyst, Sec. 15 is not in any way connected with the prosecution or the trial so as to make it an indispensable preliminary to either. If an accused contends that he would have had his part of the sample analysed but for failure to give him notice in writing under S. 15 the Court would have to consider the reasonableness of that plea. (e)

Note:—This judgment A. I. R. 1942 Mad. 609 was noticed in a subsequent case of the same High Court published as A. I. R. 1944 Mad. 236 (f) and it was observed that in A. I. R. 1942 Mad. 609 "All that was stated there was that there must be proof that the accused sold the milk. In that particular case there was no proof of sale and the evidence disclosed that the Sanitary Inspector seized a part of the milk and sent to the analyst. The accused could not be found guilty as there was no evidence of sale". In the face of these

(c) See foot note(b) on page 191.

(d) Sawal Ram Aggarwal Vs. Emperor A.I.R. 1934 Cal. 858=1934 Cr.C. 1372=153 I.C. 632.

(e) In re Bellemkonda Kanahayya—1942 Mad. 699=55 M.L.W. 464=1942 2 M.L.J. 172=1942 M.W.N. 439=1942 M. Cr. C. 108=202 I.C. 607=43 Cr. L.J. 863.

(f) Public Prosecutor Vs. Narain Singh A.I.R. 1944 Mad. 236=1944 1 M.L.J. 16=57 M.L.W. 15=214 I.C. 94=1944 M.W.N.559=45 Cr. L.J. 724

observations apparently the opinion expressed in A. I. R. 1944 Mad. 609 that the omission to give notice is not material is obiterdicta. However, the provisions of the Madras Act were quite different from the provisions of the Central Act.

Even every other purchaser (may he be any official or non-official) other than a Food Inspector has to give notice to the vendor at the time of purchase, of his intention to have such article analysed (Sec. 12, Proviso 1). Provisions of Sec. 11 sub-section (1), (2) and (3) do apply as far as may to such purchaser of food as they apply to a Food Inspector who takes a sample of food for analysis (Sec. 12, Proviso 2).

4. Effect of non-compliance of Rules No. 7, 15, 17, & 18 of the Rules framed under Sec. 23 :—Rules 7, 15, 17 and 18 are directory and not mandatory. There is no direction in the Prevention of Food Adulteration Rules laying down that a report of the Public Analyst shall not be admissible in evidence without compliance with certain rules. It is possible to take the Public Analyst's report into consideration even in a case where there was non-compliance with some of the rules. Hence even if a particular rule was not followed, that would not be sufficient for interfering with the conviction of the accused under the Act. (g)

5. Absence of mediatorsnama—and non production in Court of third part of the sample—effect : Preparing of the mediatorsnama is not absolutely necessary to evidence the taking of sample. Similarly, the section does not make it obligatory on the executive officer to produce in Court the third portion of the sample which is kept with him irrespective of the fact whether it is required or not. When the fact that the sample sent to the analyst was taken from the accused's shop is not disputed or the Executive officer is not called upon to produce the portion of the sample it is not necessary for him to produce it. (h) (case under the Madras Prevention of Adulteration Act, 111 of 1919).

6. Section 11 (4) :—Under this sub-section the Food Inspector is bound to produce before a Magistrate the article seized under sub-section 10 (4), as soon as possible after seizure, except in the case of an article of which he has taken the sample for analysis and which he has sent to the Public Analyst, in which case the article seized may be produced by him on or after the receipt of the report of the Public Analyst. In case an application is made to the Magistrate by the person from whom an article of food has

(g) Kamalsingh Vs. State—1957 All. L.J. 89=1957 All. W.R. (H C) 385.

(h) Public Prosecutor Vs. Rama Subba Rao A.I.R. 1950 Mad. 551=1950 M.W.N. 296=1950—1 M.L.J. 652=51 Cr. L.J. 967=1950 M.W.N. Cr. 76.

been seized, the Magistrate is bound by written order to direct the Food Inspector to produce the said article before him within such time as may be specified in the order. This provision has been made to avoid any tampering with the article of food alleged to have been seized.

Therefore the article seized must come before the Magistrate as soon as possible after the seizure in a case where no sample has been taken. In a case where sample has been taken there being no chance of any tampering with of the article of food of which sample has been taken, it has been provided that in such a case the article of food is to be produced on or after the receipt of the report of the Public Analyst.

7. Effect of delay in producing the article seized before the Magistrate :—It has the same effect as filing of a complaint after some delay or filing of first information report after some delay. This delay in either case throws suspicion on the bona fides of the complaint.

Prosecution launched after inordinate delay raises suspicion that this has been done to serve some other end either of the complainant or of some other person who is interested in disgracing the accused (i).

The delay in launching a prosecution, as such, cannot raise a presumption against the prosecution, although the accused is entitled to say that, in construing the evidence, presumptions are permissible to fill in, in his favour, the details obliterated by time. (j)

Delay in giving first information report makes it suspicious and sometimes unreliable. (k)

8. Sec. 11 (5) : Under this sub-section when an article of food has been produced before the Magistrate in accordance with the provisions of Sec. 11 (4), he is to take such evidence as he may deem necessary and thereafter if he comes to a finding that the said article produced is adulterated he can pass either of the following orders :—

- (i) that the article be forfeited to the local authority ;
- (ii) that the article be destroyed at the cost of the owner or the person from whom it was seized so that it may not be used as human food again ;

(i) Kali Prashed Singh Vs. Shri Krishan—A.I.R. 1938 Pat. 543=39 Cr. L.J. 774=176 I.C. 725=4 B R 755.

(j) Krishna Dayal Vs. Emperor A.I.R. 1946 All. 227=1945 A.W.R. (H. C.) 298= 227 I.C. 269=47 Cr. L.J. 1041.

(k) Harkishanlal Vs. Khushabi Ram A.I.R. 1926 Lah. 213=27 Cr. L.J. 932=96 I.C. 388 Nawab Vs. The Crown A.I.R. 1923 Lah. 391. Radha Kishan Vs. Emperor A.I.R. 1938 Lah. 714.

- (iii) it be so disposed of as to prevent its being again exposed for sale or use for food under its deceptive name ;
- (iv) it be returned to the owner for being sold under its appropriate name, after taking adequate guarantee from the owner.

9. Section 11 (6) : Where the Magistrate's finding is that the article in question is not adulterated he must restore the article to the person from whom it was taken. The Magistrate is also given discretion to award the said person such compensation not exceeding the actual loss which such person has sustained as the Magistrate may think proper from such fund as the State Government may direct in this behalf.

10. Such evidence as the Magistrate may think necessary : No doubt discretion has been given to the Magistrate to take such evidence as he thinks necessary, but this discretion must be judicious. Parties especially the respondent whose articles have been seized and are the subject matter of the enquiry should be allowed to produce what evidence he thinks necessary. The parties have a voice in the matter especially the respondent and the Magistrate ought to take all that evidence unless he considers definitely the same to be entirely frivolous and waste of time. Moreover, in such an enquiry the most important evidence is the report of the Public Analyst or the certificate of the Director of Central Food Laboratory. In case the Food Inspector has produced the report of the Public Analyst, if the respondent desires he should be allowed to take steps to have the certificate of the Director of Central Food Laboratory. Even the Magistrate should suo motu also in the ends of justice have such evidence on the file. The principles of natural justice must also be resorted to in the matter of allowing parties to produce their respective evidence.

✓ **11 Power of Magistrate to order destruction or other disposal of the article seized:—**The law does not authorise the Magistrate to order destruction or other way of disposal of seized adulterated article except at the cost of the person in possession of the same at the time of the seizure(1).

Under Section 12 (2) of the Madras Prevention of Adulteration Act it is not necessary that any one should be found guilty of any offence. All that is required is that the Magistrate on taking evidence, should think it necessary that the food concerned is of the nature described in Section 9 of the Madras Act. The intention of this Section is that a deleterious stuff should not be exposed to sale, which could only be prevented by the destruction thereof.

(1) Makhanlal Bhomik Vs. Ram Bhakat Sharma—1953 Cr. L.J. 1134= A.I.R. 1953 Cal. 485.

The accused was charged for being in possession of a number of bags containing a prohibited article for the purpose of sale. It was however found that the bags were in possession of the accused merely as an agent of the principal who was residing outside the province. The accused was acquitted of the offence, but the Magistrate ordered destruction of the article under Section 12 (2) (b) of the Madras Act. It was held that the Magistrate was quite competent to pass the order of destruction. The contention that in such a case the article should be transported to the place where the principal resided could not be accepted as it would defeat the very object of Section 12 (2)(b) (m).

12 Precautions must be taken while sending sample for analysis in case of milk and other articles capable of disintegration and radical change in composition—Where articles sent for examination are capable of disintegration or of undergoing radical change in composition it must be shown that the composition of the sample had not gone any change since its transmission. Milk is one of the articles which undergoes rapid and considerable chemical change unless it is kept under refrigeration. The subject of milk is dealt with in Extenso by Harvey and Hill in their book called "Milk : Production and Control" and the relevant portions from the same are given below:—

At page 11 of the book the subject 'Bacteria found in milk' is dealt with. Among other things the learned authors have observed:—

"Despite their minute size, bacteria can accomplish a great deal in various directions. It has been proved that lactic acid organisms, which are present in milk in varying numbers even when produced under clean conditions, can consume their own weight of food each hour. They absorb food over their entire surface and emit waste products, generally acids, into the milk".

Then at page 13 it is stated :

"The acid producing organisms cause an alteration in the character of the milk which ends in putrefaction. The factors which decide the rate of this change are (a) the quantity originally present in the milk, (b) the temperature at which the milk is kept. If milk with a high bacterial content is kept above a temperature of 60° F conditions are favourable for early and rapid souring."

Then at page 16 it is stated :

"In some milks acid develops to a considerable extent, while in others fermentations take place. Seventy degrees F. sees'the

(m) Narsi Dayabhai. in re.—(1954) 2 M.L.J. Andhra 101=1954 Mad W. N. 939 (1944 2 M.L.J. 366 Rel.)..

rapid development of the lactic-acid organisms, principally the *Streptococcus lactis*."

Then at page 177—178 they state :

"The keeping properties of milk depend upon the the number of bacteria contained. Bacteria multiply more rapidly at high temperatures than at low, and the higher the temperature the more rapidly do they increase, this being especially the case with those organisms which cause rapid souring and objectionable flavours in milk.....The bacteria most commonly found in milk grow more rapidly at temperatures above 60° F. At temperatures above 70° F. milk speedily sours. If the liquid contains as few as 10,000 bacteria and is held at 60 F., it will become sour in fifty three hours. If the same milk is held at 50° F., it will not sour for eighty six hours. Every effort should therefore be made to ensure that the milk is cooled to a temperature as low as is possible under the prevailing circumstances."

At page 359 they say:

"It is essential to the proper standardisation of sampling that all samples should be collected in accordance with principles laid down for Designated Milks in Memo. 139/Foods (January 1937) issued by the Minister of Health.....This sample should be delivered intact to the bacteriologist.....When the milk has been obtained, it should be packed in ice in a suitable carrying case, and should be kept under these condition until it arrives at the laboratory. This precaution is particularly essential if the samples have to travel some distance.....In any case, if milk cannot be delivered to the laboratory within fifteen minutes of sampling, ice should always be used except in the case of pasteurised or other heat-treated milks".

The authors enjoin that the milk should be collected in sterile glass bottles, which should be fitted with accurately fitting metal or glass stoppers. They also emphasize that the bottles after being filled with liquid from the dipper should be securely stoppered and packed in ice in a suitable box and also say that it is important that each bottle should be filled as full as possible in order to exclude the maximum amount of air.

The learned authors also attach great importance to the fact that milk is tested as soon after the sample is taken as possible. In this connection their suggestions to the local authorities are :

"Whichever method is used, it is advisable that the laboratory should be situated adjacent to the district concerned, in order to prevent any delay in transmitting samples...it would appear highly desirable that every council should provide its own labora-

tory and not rely on testing being carried out by outside bodies as so often is the case."

As regards the fat content of milk, the learned authors observed as follows at page 394:—

"It is important to remember that the Sale of Milk Regulation 1939, provides that a sample of milk containing less than 3 per cent of fat or less than 8·5 per cent of other solids is to be presumed, for the purposes of the Food and Drugs Act, 1938, not to be genuine until the contrary is proved. This limit for fat is exceedingly low when modern scientific principles of farming are considered as the average fat content of milk from a mixed herd rarely falls below 3·5 per cent milk of individual animals, however, frequently fails to reach the standard fixed, this discrepancy being very noticeable amongst pedigree animals from which it might be expected that milk would be of the highest obtainable standard. Because of these variations and to prevent injustice, provision has been made for 'appeal to the cow' samples to be taken when necessary. Should such samples fall below the specified standard; an appeal may be allowed."

At page 405 the learned authors observe as follows :

"Added water may be suspected under the following circumstances ;—(a) Fat percentage below 3 per cent. (b) Percentage of non-fatty solids below 8·5 per cent. (c) Percentage of total solids below 11·5 per cent. (d) Percentage of ash below 0·65 per cent. (e) Freezing point nearer to zero than 0·550 C. (f) Specific gravity less than 1·027. (g) Refractive index less than 37."

It must be reiterated that the above facts only point to suspicion of added water, it being impossible to differentiate between watered milk and milk which is naturally poor in fatty or non-fatty solids by the practical use of the above data."

"Although genuine milk usually contains some 87·5 per cent of water, other samples, though genuine, may contain more or less."

The learned author then states :

"Because of changes which occur in lactose, even before souring takes place, the percentage of this substance can only be determined when milk is fresh. For this reason it is desirable that milk should reach the analyst at the earliest possible moment after sampling, maintained, if necessary, in a sweet condition by means of ice".

This increases the importance of refrigeration of samples and of avoidance of delay in analysing the same. In case the required

precautions are not taken the report of the Public Analyst becomes useless (n)

13. Whether procedure was followed—presumption as to, if can be made :—The presumption under section 114 illustration (e) Evidence Act applies to procedure only. There being no presumption that the law has been observed. When the Food Inspector has deposed in evidence that he took samples of ghee from the shop of the accused (out of which two samples were found to be adulterated), the court is entitled to presume under section 114, illustration e) Evidence Act, that the procedure adopted by the Inspector was correct, especially when the accused so far from objecting to the procedure, accepted it in requesting that the sample of ghee should be sent for further analysis to the Chemical Examiner to Govt. Bengal, at Calcutta as provided by the proviso to clause (5) of Section 11 of the Punjab Pure Food Act (o)

(14) Liability of the Inspector destroying ghee seized as suspected to be adulterated but found by the Magistrate to be unadulterated and ordering its return and the limitation for suit. Where any inspector takes possession of tins of ghee suspecting contents to be adulterated but ghee found by the Magistrate not adulterated and release of tins ordered and their return directed—Inspector destroying tins—suit to recover tins or their value. It was held that the destruction of tins by the Inspector after the order of release by the Magistrate was unlawful. Further held, that since the Magistrate had found in his order directing the return of the tins that the ghee was not adulterated, the Inspector could not be said to have destroyed the tins in the belief that he was authorised to do it according to the Punjab Pure Food Act which contained no provision for the destruction of goods after they were directed to be returned. Consequently the suit to recover the tins or the value thereof was governed by Article 49 Indian Limitation Act and not by Article 2, and the limitation began to run from the date of the order of release by the Magistrate. Held, also that the suit for the recovery of tins or their value lay against the Govt. and not against the Municipality (p).

(n) Dattappa V Buldana Municipality A.I.R. 1951 Nag 191=1952 Cr. L. J. 471.

(o) Emperor Vs. Prem Singh—A.I.R. 1944 Lah. 420=I.L.R.(1944) Lah. 240=46 Cr. L.J. 135.=17 R.L. 190=216 I.C. 190.

(p) Harnam Singh Vs. N.W.F. Province Government—A I.R. 1942 Pesh 57=15 R Pesh. 38=202 I. C. 218.

SECTION 12

12. *Purchaser may have food analysed.* Nothing contained in this Act shall be held to prevent a purchaser of any article of food other than a Food Inspector from having such article analysed by the Public Analyst on payment of such fees as may be prescribed and from receiving from the Public Analyst a report of his analysis.

Provided that such purchaser shall inform the vendor at the time of purchase of his intention to have such article so analysed:

Provided further that the provisions of sub-section (1) sub-section (2) and sub-section (3) of section 11 shall, as far as may be, apply to a purchaser of article of food who intends to have such article so analysed, as they apply to a Food Inspector who takes a sample of food for analysis;

Provided also that if the report of the Public Analyst shows that the article of food is adulterated, the purchaser shall be entitled to get refund of the fees paid by him under this section.

SYNOPSIS

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| 1. Section 12 explained and analysed. | 3. Sample taken by a person other than a Food Inspector. |
| 2. The underlying principle allowing refund of fees. | 4. Purchaser. |

COMMENTARY

1 Section 12 explained and analysed:—(i) Section 12 authorises every person (official or non-official) other than a food inspector to purchase an article of food for the purpose of having such article analysed by the Public Analyst on payment of prescribed fee and to receive from the Public Analyst a report of his analysis. But such purchaser must inform the vendor then and there at the time of purchase, of his intention to have the article purchased analysed.

(ii) The provisions of sub-sections (1), (2) and (3) of section 11 shall also apply as far as may be to every purchaser under section 12 who intends to have such article analysed.

(iii) In case the report of the public analyst shows the article of food to be adulterated, the purchaser is entitled to refund of fee paid by him for analysis.

2 The underlying principle allowing refund of fees:—As the private purchaser takes the trouble of purchasing an article of food suspecting the same to be adulterated and sends the same to public analyst for analysis on payment of prescribed fee, his act being for public benefit, so a very wholesome provision has been made allowing the refund of the fees paid by him, should the article of food be found by the public analyst to be adulterated.

3 Sample taken by a person other than a Food Inspector:—His case is to be treated as falling under section 12 of the Act provided he has followed all the requirements of the section.

The question arose in following cases under Provincial Acts before the passing of the present Prevention of Food Adulteration Act :—

A Sanitary Inspector of Municipality took some samples from a ghee shop and sent them to public analyst. It was proved that the Sanitary Inspector was not specially authorised under S. 10, Bengal Food Adulteration Act to act under sections 10 and 12 of said act :

Held : that Sanitary Inspector could take the samples and send them to public analyst for examination under the provisions of the Act, as a private individual under Sec. 9 :

The person buying the articles is bound by the statute to notify to the seller his intention to have the article analysed. But no particular form of words is required, nor even any words at all, what is necessary is that the seller must know that the samples are to be taken for the purpose of analysis so that he may see that the samples are fairly taken (a).

(4) Purchaser A transaction which can be described as purchase can only be based on passing of consideration. When the sanitary inspector did not actually pay any price as the accused

(a) Maninder Nath Banerjee V. Jyotish Chandra Dutta—A.I.R. 1937 Cal. 60—169 I.C. 251—I.L.R. 1937—1 C. 765—38 Cr. L.J. 745 A.I.R. (1934 Cal. 858 Foll. Wheeler V. Webb, (1887) 51 J. P. 661 and Monro V. Central Creamer Co., Ltd., (1912) I.K.B. 578, Rel. on.)

did not accept and there is no evidence that he promised to pay the price in future, the transaction cannot be held to be a purchase(b).

The Legislature has kept up a clear distinction between a purchaser referred in Section 13 and one referred in Section 14 of the Bihar Prevention of Adulteration Act, 1947 (5 of 1948) by describing the thing purchased by the latter as a sample of food, while the words used in section 21 (a) are "an article of food". Hence Cl (a) of section 21 refers to an ordinary purchaser for whom provision has been made in section 13 and not to a person who acts under section 14.

Further, an ordinary transaction of sale and purchase imports free agreement between the parties. When a Sanitary Inspector obtains a sample of an article of food which is supplied to him under a feeling of compulsion, he cannot be said to be a purchaser under section 13 and as such cannot file a complaint as a purchaser under 21 (a) of Bihar Act(c).

SECTION 13

13. Report of Public Analyst. (1) The Public Analyst shall deliver in such forms as may be prescribed, a report to the Food Inspector of the result of the analysis of any article of food submitted to him for analysis.

(2) After the institution of a prosecution under this Act the accused vendor or the complainant may, on payment of the prescribed fee, make an application to the Court for sending the part of the sample mentioned in sub-clause (i) or sub-clause (iii) of clause (c) of sub-section (1) of section 11 to the Director of the Central Food Laboratory for a certificate; and on receipt of the application the Court shall first ascertain that the mark and seal or fastening as provided in clause (b) of sub-section (1) of section 11 are intact and may then despatch the part of the sample under its own seal to the Director of the Central Food Laboratory who shall thereupon send a certificate to the Court in the prescribed form within one month from the date

(b) Ramjee Prasad V. The State A.I.R. 1955 N.U.C. 451 (A) Patna.

(c) Pursottam Dass V. The State A.I.R. 1955 N.U.C. 455 (Patna).

of receipt of the sample, specifying the result of his analysis.

(3) The certificate issued by the Director of the Central Food Laboratory under sub-section (2) shall supersede the report given by the Public Analyst under sub-section (1).

(4) Where a certificate obtained from the Director of the Central Food Laboratory under sub-section (2) is produced in any proceeding under this Act, or under Sections 272 to 276 of the Indian Penal Code (Act XLV of 1860) it shall not be necessary in such proceeding to produce any part of the sample of food taken for analysis.

(5) Any document purporting to be a report signed by a Public Analyst, unless it has been superseded under sub-section (3), or any document purporting to be a certificate signed by the Director of the Central Food Laboratory, may be used as evidence of the facts stated therein in any proceeding under this Act or under Sections 272 to 276 of the Indian Penal Code (Act XLV of 1860).

Provided that any document purporting to be a certificate signed by the Director of the Central Food Laboratory shall be final and conclusive evidence of the facts stated therein.

SYNOPSIS.

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|---|---|
| 1. Sec. 13 (1) and (5). | value. |
| 2. Duties of Public Analyst in dealing with the sample sent for analysis and the form in which he should send the report. | 5. The certificate of the Public Analyst must be in the prescribed form otherwise not admissible. |
| 3. Whether the Public Analyst is bound to carry out all the tests himself? | 6. Non-compliance of Rules Nos 7, 15, 17, 18 and its effect on the report of the Public Analyst. |
| 4. What should the report of the Public Analyst contain? Its | 7. Presumption under Section 114 Evidence Act—Whether |

- applies to the report of Public Analyst ?
8. Court bound to call the Public Analyst as a witness for cross examination and not at the expense of the accused.
 9. Difference in value of report of Public Analyst and of the certificate of the Director of Central Food Laboratory—Section 13 (3) and (5).
 10. Report of the Public Analyst—Effect of delay in making the report.
 11. Certificate of a Public Analyst in the absence of evidence to the contrary is conclusive.
 12. When insertion of weight of sample is necessary to be given in certificate.
 13. Analyst of a private technological institute not a Public Analyst and so his certificate is not admissible.
 14. Section 13 (2).
 15. The procedure to be followed to bring the certificate of the Director of the Central Food Laboratory on the file
 16. Section 13 (4)
 17. Standard of articles of food for which no standards are prescribed by the Rules framed under Sec. 23 of the Act.
 18. Where no standard is fixed by the Legislature—Article 14 of the Constitution is contravened
 19. Section 13 (3), (5). Value of certificate.
 20. The question whether article of food adulterated or not is to be decided by Court only and not by Public Analyst.
 21. Inference of adulteration whether justified from fat and non-fat solids in samples of milk being below those prescribed.
 22. Refractive index whether guide to purity of butter ?

COMMENTARY

1. **Sec. 13 (1) and (5).** The Public Analyst has to deliver his report in the prescribed form, to the Food Inspector, of the result of the analysis of the article of food submitted to him for analysis and such report unless superseded by the certificate of the Director of the Central Food Laboratory may be used as evidence of the facts stated therein in any proceedings under this Act or under Secs. 272 to 276 Indian Penal Code.

2. **Duties of Public Analyst in dealing with the sample sent for analysis and the form in which he should send the report.**

Rule No. 7 Duties of Public Analyst: On receipt of a package containing a sample for analysis from a Food Inspector or any other person the Public Analyst or an officer authorised by him shall compare the seals on the container and the outer cover with specimen impression received separately and shall note the condition of the seals thereon.

(2) The Public Analyst shall cause to be analysed such samples of articles of food as may be sent to him by Food Inspector or by any other person under the Act.

(3) After the analysis has been completed he shall forthwith supply to the person concerned a report in Form III of the result of such analysis.

FORM III

[See rule 7 (3)]

Report by the Public Analyst.

Report No.....

I hereby certify that I.....
.....Public Analyst for
.....duly appointed under the provisions of
the Prevention of Food Adulteration Act, 1954, received on the
.....day of.....19... ..From... ..
.....a sample of.....
.....for analysis, properly sealed and
fastended, and that I found the seal intact and unbroken.

I further certify that I have analysed the above mentioned sample, and declare the result of my analysis to be as follows :—

.....
.....
.....
and am of the opinion that.....
.....
.....

Signed this.....day of.....
19

Address (Signature)
Public Analyst.

.....
.....

—:(o):—

3. Whether the Public Analyst is bound to carry out all the tests himself? The use of the words “shall cause to be analysed” in Rule No. 7 sub-clause (2) clearly indicates that the Public Analyst is not bound to carry out all the tests himself. He can get the tests performed by his Assistants under his supervision.

(4) What should the report of the Public Analyst contain. Its value:—Where the report of the Public Analyst does not give any data of the quantitative analysis, the report cannot be adequately tested and must be rejected. The *ipsi dixit* of the Public Analyst that a certain sample of ghee is “adulterated” or “grossly adulterated” and does not conform to the standard, ought not to be accepted by a Court unless and until the Public Analyst gives the data from which it can be ascertained in what respects the sample is different from the standard. No person ought to be put in peril of a punishment on such a written report which fails to furnish the data and which is not given on oath and untested by cross-examination (a)

The weight to be attached to the report of the Chemical Examiner used in evidence under S. 510 Criminal P. C. came to be considered by a Division Bench Allahabad High Court in ‘Happu vs. Emperor A.I.R. 1933 All. 837. In that case the question was whether a lethal dose of arsenic, that is, two grains or more had been administered. The report of Chemical Examiner on which the trial court placed reliance was simply this, namely, that arsenic was “detected” in the viscera of the deceased. That was not enough to prove death by arsenic poisoning.

When the appeal was brought to this Court a quantitative analysis report by the Chemical Examiner was produced at the Court’s request. The Chemical Examiner reported that he had found 0.182 of a grain of arsenic in those portions of the viscera that was submitted to him.

In considering the question as to what weight was to be attached to the written report of the Chemical Examiner used in evidence under Sec. 510 Cr. P.C. which was not made on oath and not tested by cross-examination, it was held that having regard to the circumstances of that case no weight was to be attached to it and since Sec. 510 used the word “may” and not “shall” the Court has a discretion in the matter, and for the ends of justice whenever the Court thinks necessary to call the Chemical Examiner in evidence it should exercise the right so that he may be examined on oath and be subjected to cross-examination (a).

The same may be said “*mutatis mutandis*” to the report of the Public Analyst, may having regard to S. 10 of the U.P. Pure Food Act and Rule 18 of the U. P. Pure Food Rules 1952. The report of the Public Analyst in present case which did not indicate upon what data and in what particulars the ghee was “adulterated” or “grossly adulterated” could not, therefore, form the basis of the conviction in order to justify the conclusion that the ghee did not conform to the standard, laid down in Rule 18(a).

(a) *Din Dayal V. State* A.I.R. 1956 All. 520=1956 All. L.J. 276=1956 Cr. L.J. 1031=1956 All. W. R. (H.C.) 207.

In giving analysis of articles sent to the Public Analyst he must give exact degree of adulteration or deterioration. Approximations cannot be allowed in cases of this kind. If the only evidence against the accused is that of the Public Analyst, then it is not sufficient to sustain conviction when there is no exactitude in the report of the Public Analyst (b).

Where the certificate of the Public Analyst is that the sample of milk examined by him falls short of the standard of purity for milk prescribed, the burden of proof shifts to the accused(c).

No doubt Sec. 5 (1) of the C. P. Prevention of Adulteration Act creates, a presumption of adulteration in respect of an article of food examined by the Public Analyst ; but whether such a presumption must be drawn, must necessarily depend upon the facts established in each case. As the composition of milk undergoes a rapid change unless the milk is kept under refrigeration, it has to be established in a case where a person is charged with adulteration of milk *i. e* the sample of milk sent to Public Analyst, was sent under refrigeration. Where the prosecution has led no evidence to that effect, no presumption under section 5(1) can properly be raised in the case(d).

The certificate of the Chemical Analyst should contain the actual data which the analyst should reveal and not merely his opinion as to what that data indicates, about the nature of the article of food, and that if the certificate merely gives the final opinion of the Public Analyst and if such an opinion be held to be conclusive evidence about the nature of the article of food, the merit of the case against the accused is really decided by the Public Analyst and not by the Court and Court just gives his authority to the conclusion of the Public Analyst and this cannot be the position in law. When the report of the Public Analyst not only it does not specify what Section 10 of U. P. Pure Food Act (here Section 1 read with Rules) required him to specify and what could have been evidence for the consideration of the Court but is not also in the form prescribed by the Rules, no finding can therefore, be recorded on the basis of such a certificate that the ghee purchased from the accused's shop was adulterated ghee (e)

The report of the Public Analyst not containing factual data is not conclusive evidence (f).

b) Gurcharan Dass Nandlal V. The State 59 Punj. L.R. 89=A.I.R. 1957 Punj, 109=1957 Cr. L.J. 658.

(c) State Govt. of M.P. V. Sonabai 1952 Cr. L.J. 448=I.L.R. (1951) Nag. 751=1951 N.L.J. 282=A.I.R. 1952 Nag. 83.

(d) Dattappa Mahadappa Vs. Secretary Municipal Committee Buldhana—A.I.R., 1951 Nagpur 191=1952 Cr. L.J. 471.

(e) State V Sahati Ram—1957 All. L. J. 647=1957 All. W.R. (H.C.) 676=1958 Cr. L.J. 8=A.I.R. 1958 All. 34.

(f) Dharam Deo Gupta V. State A.I.R. 1958 All 865 (A.I.R. 1956 All. 520, A.I.R. 1958 All 34 Rel.)

In the case of articles like milk butter or any other food liable to decomposition, the analyst must specifically state in his certificate whether any change had taken place in the constitution of the said article which would interfere with analysis (g).

Where a certificate of analyst merely states that the sample contained an excess of water over and above of what is allowed by the Act of Parliament—such a certificate does not warrant a conviction (h).

A certificate merely stating that the sample contained 5% of added water was held defective as evidence of adulteration because the certificate did not state the constituent parts of the sample analysed (i).

Where a certificate merely states that the sample of beer contained arsenic or that it contained a serious quantity of arsenic is inadequate. The certificate must contain sufficient materials to enable the magistrates to form a judgement on those materials whether the offence has been committed or not (j).

In a case where the charge was that the milk has been sold to a purchaser to his prejudice which was not of the nature, substance and quality of the article demanded, the certificate is admissible if it sets out the deficiency in fat complained of. It need not set out the constituent parts of the sample analysed (k).

In all the cases where pure food is analysed the Analyst should indicate what is the extent of impurity and what the impurity is. Merely stating that it is highly adulterated with extraneous vegetable matter is not sufficient for the purpose of determining the question of guilt or otherwise of the accused person (l).

5. The certificate of Public Analyst must be in the prescribed form otherwise not admissible : Under Sec. 13 Cl. (1) the report of the Public Analyst must be in the prescribed form otherwise the report is not admissible. The question arose in a case under the Bengal Food Adulteration Act 1919 and it was held that under S. 14 (2) of that Act the Public Analyst should submit his certificates in the form prescribed in the schedule to the Act. Where no such certificate was submitted, but the Public Analyst

(g) Bakewell V. Davis (1894) 1 Q.B. 296.

(h) Newby V. Sims (1894), 1 Q.B. 478=63 L.J. M.C. 288=70 L. T. 105=58 J.P. 263=10 T.L.R. 206=38 Sol. Jo 202=10 R. 596 D.C.

(i) Fortune V. Hanson (1896), 1 Q.B. 202.

(j) Goulder V. Rook. Bent V. Ormerod Lee V. Bent, Barlow v. Palmer V. Noblett, (1901) 2 K.B. 290.

(k) Jenkins V. Nadan (1919). 88 L.J.K.B. 1137.

(l) The State V. Shanti Prakash—1957 Punjab 56=59 P.L.R. 17=1957 Cr. L.J. 390.

reported on the case by a letter in the ordinary official form. It was held, that this letter was not admissible in evidence without proof of the truth of its contents. (m)

Certificate not in prescribed form is not sufficient evidence of the facts stated therein. (n)

Where the certificate of the Analyst was informal and not in the form prescribed by law, the conviction must be quashed. (o)

6. Non-compliance of rules 7, 15, 17, 18 and its effect on the report of the Public Analyst : Rules 7, 15, 17 and 18 are directory and not mandatory. There is no direction in the Prevention of Food Adulteration Rules laying down that a report of the Public Analyst shall not be admissible in evidence without due compliance with certain rules. It is possible to take the Public Analyst's report into consideration even in a case where there was non-compliance with some of the rules. Hence even if a particular rule was not followed, that would not be sufficient for interfering with the conviction of the accused under the Act. (p)

7. Presumption under section 114 Evidence Act whether applies to the report of Public Analyst?—The true effect of S. 114 of the Evidence Act is that, if an official Act is proved to have been done, it will be presumed to have been regularly done

Where there is evidence to the effect that the sample was sent by the Inspector under the Prevention of Food Adulteration Act, to the Public Analyst, it is permissible to raise a presumption that the act of despatch was done regularly and properly. (q)

The certificate of an analyst is evidence without formal proof but there is no presumption that it is accurate. (r)

The presumption under Sec. 114 illustration (e) applies to procedure only, there being no presumption that the law has been observed. (s)

8 Court bound to call the Public Analyst as a witness for cross examination and not at the expense of the accused : Accused has a right to cross examine any witness whom the prosecution has produced against him. This right is not to be taken

(m) *Raghunath Modi V. Kurseong Municipality* A.I.R. 1923 Cal. 561=25 Cr. L.J. 170=76 I.C. 394.

(n) *In re Bhikhibhai Ramdas* A.I.R. 1955 N.U.C. Bom. 3645.

(o) *Raghunath Modi V. Kurseong Municipality* A.I.R. 1923 Cal. 561=25 Cr. L.J. 170=76 I.C. 394 *Peart V. Barstow* (1880), 44 J. P. 699, *Smart and Son V. Watts* (1895) 1 Q.B. 219.

Goulder V. Rook, Bent V. Ormerod Lee V. Bent Barlow (or Palmer) V. Noblett, (1901), 2 K.B. 290.

(p) *Kamal V. State*—1957 All. L. J. 89=1957 All. W.R. (H.C.) 385.

(q) Do.

(r) *Legal Rememberancer Bengal V. Kohitish* A.I.R. 1939 Cal. 667=43 C.W.N. 1030=12 R.C. 229=184 I. C. 423=I. L. R. (1939) 2 Cal. 465 See also A.I.R. 1934 Cal. 858.

(s) *Emperor V. Prem Singh* A.I.R. 1944 Lah. 420=I.L.R. 1944 Lah. 240=216 I.C. 190.

away because for special reasons a Public Analyst has been allowed to give his evidence in writing and not by word of mouth. The Act itself confers upon the accused person the right to require the Court to summon the Public Analyst as a witness and it lays upon the Court the duty of summoning that witness accordingly, and this obligation cannot be defeated by imposing as a prior condition the deposit of a prohibitive fee. Hence a Magistrate acting under S. 16 of the Act ought not to require the accused person to make any deposit of expenses and they cannot, if those expenses are not deposited, decline to issue the summons. (t)

The accused should not be denied the right to test the opinion of the Analyst by his examination as a witness when the conviction is based solely on his opinion. (u)

There is no law that the accused's right to insist upon the Public Analyst being summoned and examined as witness is to be exercised only after the accused has led evidence in his own defence challenging the correctness of the Public Analyst's certificate. The language of the section on the contrary shows clearly that it is open to the accused at the commencement of the trial, as soon as he is accused of the offence, to require the Court to summon the Public Analyst as a witness. (v)

The general principle is that the written opinion of an expert is not admissible at all and that he must come into Court as a witness to support and to submit to cross examination to make the report relevant or admissible. So much so that it has been held that it is not satisfactory to examine an expert on commission in criminal cases. The evidence of an expert has always to be carefully weighed, and much more so when the expert has been examined on commission and not in the presence of the accused. The value of the expert evidence when given on commission, is considerably reduced. (w)

The position of Public Analyst is, only as that of an expert and his report as such made behind the back of the accused cannot ordinarily be treated as the evidence against him. Section 13 (5) of this Act only says that any document purporting to be a report signed by Public Analyst may be used as evidence of the facts stated therein. The sub-section does not say what is the value of this report. It is neither conclusive nor even presumptive evidence of the fact stated therein. On the other hand subsection, (5)

(t) Haji Gokal V. Emperor—1935 Sind. 5=1935 Cr. C. 46=36 Cr. L.J. 571=154 I.C. 514=7 R.S. 162.

(u) Dattappa V. Buldana Municipality—1951 Nag. 191=1952 Cr. L.J. 471.

(v) Hari Das Vallabhdas V. Bombay Municipality—1937 Bom. 364=39 B.L.R. 629=170 I.C. 867=I.L.R. 1937 Bom. 751=38 Cr. L.J. 975.

(w) Nur Din V. Emperor—108 I.C. 369=1928 Lah. 933=29 Cr. L.J. 377.

read with proviso is clear that any document purporting to be a certificate signed by the Director of Central Food Laboratory shall be final and conclusive evidence of the facts stated therein and that it shall supersede the report of the Public Analyst. So to test the value of the report made by the Public Analyst he should be called as a witness so that he may be subjected to cross examination like other experts. Even Sec. 510 of the Cr. P.C. has also been amended by section 99 of Act No. XXVI of 1955. The Section 510 as originally stood was as follows :—

“Any document purporting to be a report under the hand of any Chemical Examiner or Assistant Chemical Examiner to Government, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may be used as evidence in any inquiry, trial or other proceeding under this Code.”

Sec 510 as amended by the said Act now stands as follows :—

“Report of Chemical Examiner. (1) Any document purporting to be a report under the hand of any Chemical Examiner or Assistant Chemical Examiner to Government or the Chief Inspector of Explosives or the Director of the Finger Print Bureau or any officer of the Mint upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may be used as evidence in any inquiry, trial or other proceeding under this Code.

(2) The Court may, if it thinks fit, and shall, on the application of the prosecution or the accused, summon and examine any such person as to the subject-matter of his report.

Both the section before it was amended as well as after the amendment only says that the report of the Chemical Examiner etc. may be used as evidence in an enquiry, trial or other proceedings under this Code. The words of Sec. 13 (5) are exactly similar and still it was held in the undermentioned cases :—

That the acceptance of a mere written report of the Chemical Examiner as evidence in criminal cases without subjecting him to cross examination is extremely dangerous and that no person ought to be put in peril of capital, or any punishment on such a written report not given on oath and unattested by cross examination. (x)

There is case also under the C.P. and Berar Prevention of

(x) Ujagar Singh V. Emperor—1939 Lah. 149=I.L.R. 1939 Lah. 206=40 Cr. L.J. 576=181 I.C. 864=41 P.L.R. 493. Happu V. Emperor 1933 All. 837=56 All. 228=35 Cr. L.J. 280=1933 Cr. C. 1463 =145 I. C. 1089=1934 A.L.J. 173.

Adulteration Act (II of 1919) in which under Sec. 5 (1) of the Act there was a presumption of adulteration in respect of an article of food examined by a Public Analyst and it was held that whether such a presumption must be drawn or not, must necessarily depend upon facts established in each case and referring to a decision of the Allahabad High Court in *Happu Vs. Emperor* 56 All. 228=A.I.R. 1933, All. 837=35 Cr. L.J. 280. where dealing with a case in which a person had died of arsenic poisoning the learned Judges held that where a case depended solely upon the opinion of the Chemical Examiner, he should be examined as witness in the case. This case was later followed in *Ujagir Singh Vs. Emperor*, A.I.R. (26) 1939 Lah. 149 : 40 Cr. L.J. 576 : "I would say with respect that these cases lay down a salutary rule, and that in a case like the present one it would not be in consonance with the well-established principles of administration of justice to deny the right to an accused person to test the opinion of an expert on the basis of which he is sought to be condemned. When such opportunity was not afforded to the accused person, the opinion of the Public Analyst can carry little weight, and so cannot be regarded as an adequate basis for conviction of the accused person" (y)

The following few more judgments are very relevant in this connection on the point of value to be attached to the reports of Chemical Examiner, etc.

Where the report is meagre and criptic it is hardly of any value. (z)

It is not enough for the Chemical Examiner merely to state his opinion. He must state the grounds on which he arrives at that opinion. As the Chemical Examiner merely tenders a report and does not appear to give evidence, It is extremely desirable that his report should be full and complete and take the place of evidence which he would give if he were called to Court as a witness. (a)

The report of a Chemical Analyser may be accepted in evidence where his statement is not recorded and no application is made by the accused for summoning him (b).

Under Sec. 510 the report of the Chemical Analyser may be used as evidence without the officer being called as a witness. But where the guilt or innocence of the accused turns entirely on the

(y) *Dattappa V. Buldana Muniaipality*—1951 Nag. 191=1952 Cr. L.J. 471.

(z) *Mt. Gaya Kunwar V. Emperor*—1934 Oudh 62=11 O.W.N. 312=1934 Cr. C. 231=148 I.C. 600=19340 L.R. 341=35 Cr. L.J. 700 *Mst. Gajrani V. Emperor*—1933 All. 394. *Happu V. Emperor*—1933 All. 837.

(a) *Ujagir Singh V. Emperor* 1939 Lah. 149.

(b) *Abdul Rehman V. State* 1958 M.P.C. 58=1958 All. L.J. (Rev) 17=1958 All. W.R. (Sup) 33=A.I.R. 1958 Madh. Pra. 285=1958 M.P.L.J. 196.=1958 Cr. L.J. 1194=1958 Jab. L.J. 166.

result of the chemical analysis as to the presence of certain ingredients in the articles before the Court, it is desirable that the Chemical Analyser should be examined in support of his report and the accused given an opportunity of cross examining him. (c)

9 Difference in value of report of a Public Analyst and of the certificate of the Director of the Central Food Laboratory :— Section 13 (3) and (5) will show that the report of the Public Analyst at the most may be used as evidence of the facts stated therein while the certificate of the Director of Central Food Laboratory is final and conclusive evidence of the facts stated in the certificate and even supersedes the report of the Public Analyst.

Under Section 13 (3) of the Act certificate issued by the Director of Central Food Laboratory under subsection 2 supersede the report given by the Public Analyst under subsection 1. (d)

10 Report of the Public Analyst—effect of delay in making the report :— Where the report was made by the Public Analyst after about six months of the receipt of the sample, it was held that it is impossible to say how far the delay has affected the report. The least the prosecution could do in such a case is to examine some one to speak as to the effect of the lapse of such a long time. (e)

11. Certificate of a Public Analyst in the absence of evidence to the contrary is conclusive :— Where the certificate stated the constituents of the sample and declared the milk to be adulterated with 25% water and no evidence to the contrary was produced—It was held that the certificate ought to be acted upon and the accused should be convicted. A certificate of the Analyst is evidence of the offence charged unless displaced by evidence to the contrary. (f)

A certificate of Public Analyst shall be sufficient evidence in any enquiry, trial or proceeding under the Act of the result of such analysis. In case there is omission in the certificate to mention as to whether the sample came by post or by rail, that does not effect the liability of the accused for having sold ghee which was not in conformity with the description prescribed in the rules. (g)

(c) Behram Sheriar V. Emperor—1940 Bom. 321=46 B.L.R. 481=216 I.C. 288.

(d) A.S. Arunachala V. State (1958) 2 M.L.J. 408=(1958) M. I. J. (Cr.) 836

(e) Ram Charita Ram Bhakat V. District Board of Rajshahi 41 C.W.N. 1213=I.L.R. (1938) I.C. 420=172 I.C. 869=A.I.R. 1937 Cal. 710.

(f) Harrison V. Richards, (1881), 45 J. P. 552 D.C. followed in Bowker V. Woodroffe Bowker V. Premier Drug Co (1927) 96 L.J.K.B. 750, Elder V. Dryden (1908), 99 L.T. 20 Robinson V. Newman (1907) 86 L.J.K.B. 814.

(g) Ganesh Sah V. Chairman Deoghar Municipality A.I.R. 1955 N.U.C. (Patna) 3993.

12 When insertion of weight of sample is necessary to be given in certificate :— The insertion necessary where the weight of the sample is material to the accuracy of the analysis, and its omission does not necessarily invalidate the certificate, when the accuracy of the analysis does not depend upon the weight of the sample. (h)

13. Analyst of a private technological institute not a Public Analyst and so his certificate not admissible :— The analyst of a private technological institute [e.g. Harcourt Butler Technological Institute] is not a Public Analyst. The report of such an analyst is not therefore admissible in evidence. (i)

14. Section 13 (2) : Under this sub-section right is given to either party to the proceedings under this Act *i.e.* to the complainant as well as to the vendor accused to have it on the file through the Court on payment of a prescribed fee the certificate of the Director of Central Food Laboratory.

The Court is not bound to send the sample to the Govt. Analyst [under the Central Act to the Director of Central Food Laboratory]. (j)

15. The procedure to be followed to bring the certificate of the Director of Central Food Laboratory on the file is as follows :— A complaint was lodged against the applicant based on inspection made by the inspector of applicant's factory. The inspection related to the manufacture of mustard oil carried in the applicant's factory. Samples were taken by the inspector in three phials. One was sent to the Chemical Examiner whose report showed that the sample was adulterated. This led to the applicant's prosecution. During the trial the applicant applied that the sample in the hands of the local authority be sent to the Govt. Analyst (Here under the Central Act, the Director of the Central Food Laboratory). The trying magistrate refused. Held, that the refusal was wrong. (k)

- (i) either party can apply to the Court on payment of prescribed fee to send the part of the sample mentioned in sub-clauses (i) or (iii) of section 11 (1) (c) to the Director of Central Food Laboratory for a certificate ;
- (ii) on such application the Court shall first ascertain that the mark and seal or fastening as provided in

(h) Sneath V. Taylor, (1901), 2 K.B. 376.

(i) Devabrata Ganguli V. State of Bihar A.I.R. 1950 Pat. 301-51 Cr. L.J. 1136=5 D L.R. (Pat.) 125=4 A.I. Cr. D 332.

(j) Ramasami Konar V. Emperor A.I.R. 1942 Mad 48-1941 M.W.N. 844 (1)=55 L.W. 30 (1).

(k) Gopinath Sahu V. Arra Municipality A.I.R. 1929 Pat. 710-I.R. (1929) Pat. 520=30 Cr. L.J. 895=1929 Cr. Cas. 270-118 I.C. 328.

Section 11 (1) (b) is intact and then shall send the same to the Director of the Central Food Laboratory under its own seal;

- (iii) the Director thereupon shall send the certificate within one month of the receipt of the sample to the Court concerned specifying the result of his analysis.

The rules regarding the analysis of food samples by the Director of Central Food Laboratory, the fee to be paid and the form of the certificate of his analysis etc as given in the appendix are given below.

Rule 4. Analysis of Food Samples :

1. Samples of food for analysis whether under sub-section (2) of section 13 of the Act or under clause (a) of rule 3 shall be sent either through a messenger or by registered post in a sealed packet, enclosed, together with a memorandum in Form I in an outer cover addressed to the Director.
2. The container as well as the outer covering of the packet shall be marked with a distinguishing number.
3. A copy of the memorandum and a specimen impression of the seal used to seal the container and the cover shall be sent separately by registered post to the Director.
4. On receipt of the packet, it shall be opened either by the Director or by an officer authorized in writing in that behalf by the Director who shall record the condition of the seal on the container.
5. After test or analysis, the certificate thereof shall be supplied forthwith to the sender in Form II.
6. The fee payable in respect of such a certificate shall be Rs 40/- per sample of food analysed.
7. Certificates issued under these Rules by the Laboratory shall be signed by the Director.

(Note) clause (6) above is as amended by Notification No. S. R. O 2755 dated 20th Nov. 1956.

FORM I

[See Rule 4 (1)]

(Memorandum to the Director, Central Food Laboratory)

From

.....

To

The Director,
Central Food Laboratory,

.....

.....

No.

Date the

19

Memorandum

I send herewith, under the provisions of Section 13 (2) of Prevention of Food Adulteration Act, 1954, sample (s) of a purporting to be for test or analysis and request that a report on the result of test or analysis may be supplied to this Court.

1. Distinguishing No. on the container and outer cover
2. Particulars of offence alleged
3. Matter on which opinion required

A fee of Rs. has been deposited in Court.
Magistrate 1st Class / Presidency Magistrate

FORM II

[See Rule 4 (5)]

(Certificate of test or analysis by the Central Food Laboratory)

Certified that the sample(s), bearing number purporting to be a sample—samples of received on with Memorandum No. date from has/have been tested/analysed that the result/results of such test(s) analysis is/are stated to be

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2. The condition of the seals on the container and the covering on receipt was as follows :

.....

.....

Director
Central Food Laboratory.....

Place :

Date :

If opinion is required on any other matter, suitable graph (s) may be added.

16. **Section 13 (4):**—Under this sub-section after the certificate the Director of the Central Food Laboratory obtained under section (2) in any proceeding under the Act or under Sections 2 to 276 of the Indian Penal Code no part of the sample taken for analysis need be produced in any such proceedings. Sections 272 to 276 of the Indian Penal Code are reproduced below for the sake of reference.

272. **Adulteration of food or drink intended for sale:**—Whoever adulterates any article of food or drink, so as to make such article noxious as food or drink, intending to sell such article as food or drink, knowing it to be likely that the same will be sold as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months or with fine which may extend to one thousand rupees, or with both.

273. **Sale of noxious food or drink:**—Whoever sells, or offers or exposes for sale, as food or drink, any article which has been rendered or has become noxious or is in a state unfit for food or drink, knowing or having reason to believe that the same is noxious as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months or with fine which may extend to one thousand rupees or with both.

274. **Adulteration of drugs:**—Whoever adulterates any drug or medical preparation in such a manner as to lessen the efficacy or change the operation of such drug or medical preparation or to make it noxious, intending that it shall be sold or used for or knowing it to be likely that it will be sold or used for, any medical purpose as if it had not undergone such adulteration, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

275. **Sale of adulterated drugs:**—Whoever, knowing any drug or medical preparation to have been adulterated in such a manner as to lessen its efficacy, to change its operation, or to render it noxious, sells the same or offers or exposes it for sale, or issues it from any dispensary for medicinal purposes as unadulterated, or cause it to be used for medicinal purpose by any person not knowing of the adulteration, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

276. **Sale of drug as a different drug or preparation:**—Whoever knowingly sells, or offers or exposes for sale, or issues from a dispensary for medicinal purposes, any drug or medical preparation, as a different drug or medical preparation, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

17. Standard of articles of food for which no standards are prescribed by the Rules framed under Sec. 23 of the Act.—Sec. 25 (2) says that notwithstanding the repeal by this Act of any corresponding law all rules, regulations and bye-laws relating to the prevention of adulteration of food, made under such corresponding law and in force immediately before the commencement of this Act : shall, except where and so far as they are inconsistent with or repugnant to the provisions of this Act, continue in force until altered, amended or repealed by rules under this Act.

So the standards fixed under the rules framed under the various Provincial Acts concerning those articles of food for which no standards have been fixed under the rules framed under the present Act are to be deemed as continuing in force, subject to the conditions laid down in Sec. 25 (2) of the Act.

18. Where no standard is fixed by the Legislature Article 14 of the constitution is contravened :—If the legislature does not lay down or indicate any standard for the guidance of the executive or of an officer but confers absolute, naked and arbitrary powers on the executive or upon the officer, the validity of such an act will be open to challenge under Article 14 of the Constitution (h).

19. Section 13 (3), (5). Value of certificate :—The certificate of the Director of the Central Food Laboratory shall be final and conclusive evidence of the facts stated therein and shall supersede the report given by the Public Analyst under sub-section (1).

20. The question whether article of food is adulterated or not to be decided by Court only and not by Public Analyst : The question whether the food is adulterated or not is one for the Court to decide and not one for the Public Analyst. The form prescribed by the Act clearly contemplates that the Analyst is merely to give his opinion as to whether the article which he analysis has an excess or deficiency in constituents which are shown in cols. 4 and 5 of the schedule attached to rule 3 of the rules framed under the Act (Punjab Pure Food Act). It is then for the Courts to come to the conclusion after considering the opinion of the analyst on this point whether the food is adulterated or not (i).

Whether an article of food is adulterated or not is a question of law on which the chemical examiner is not required to express his opinion. He is required to state only the result of the analysis and leave it to the Court to determine whether on those results the

(h) *Din Dayal V. State* A.I.R. 1956 All 520=1956 A.L.J. 276=1956 Cr. L.J. 1031=1956 All W. R. (H.C) 207.

(i) *Ganda Ram V Emperor*—1942 Pesh. 47=1942 Pesh. L.J. 47=200 I.C. 880=43 Cr. L.J. 728.

offence charged is proved or not (j).

21. Inference of adulteration whether justified from fat and non-fat solids in samples of milk being below those prescribed : The mere fact that fat and non-fat solids in any given sample of milk are below those prescribed by the Government does not lead to the inevitable inference of adulteration, as fat and non-fat contents of milk would be reduced if it is kept in its natural condition for a long time (k)

22. Refractive index whether guide to purity of butter ? Reichert Wollny and saponification value though abnormal for pure butter cannot be said beyond all reasonable doubt to be inconsistent with purity of butter. The Reichert Wollny value for the sample of butter taken from the accused was found by him to be 21.8, the refractive index was found to be 1.4549 and saponification value 216.9. It was held that the refractive index was no good criterion for determining the purity of butter as it could be easily manipulated by balancing the kinds of facts that were used in adulteration (l).

SECTION 14

14. *Import of food and sale of food in railway and other premises.* (1) The Central Government may, by notification in the official Gazette, appoint any person to exercise the powers of a Food Inspector under Sec. 10 and 11—

(a) at any major port, air port or land customs station in respect of any article of food which is being imported through such port or station ;

(b) in respect of any railway station or group of railway stations where food is being sold.

Provided that the Central Government may, instead of making any appointment under this section, authorize any Food Inspector in any State in which the major port, air port or land customs station or railway station is situate to exercise such powers.

(j) *Narinjan Das V, Emperor* A.I.R. 1930 Rang. 51=126 I.C. 535 =31 Cr. L.J. 1065=1930 Cr. C. 24. *State V, Nathi Lal*, 1956 A.L.J. 340.

(k) *Dattappa Mahadappa V Secretary, Municipal Committee, Buldhana* A.I.R. 1951 Nag. 191=1952 Cr. L.J. 71.

(l) *In Rve Perumal and Co.* A.I.R., 1943 Mad. 47=1942—2 M.L.J. 285 =1952 M.W.N. 587=55 M.L.W. 775=44 Cr. L.J. 190=204 I.C. 311=I.L.R. 1943 M 71=1942 M. Cr. C. 123.

(2) Every person appointed or authorized under sub-sec.(1) shall be deemed to be a Food Inspector for the purposes of this Act.

SYNOPSIS.

- | | |
|------------------------------------|--|
| 1. Section analysed and explained. | 8. Articles of food with respect to which a Food Inspector appointed under Section 14 (1) can exercise his powers under section 10 and 11. |
| 2. Object of the section. | |
| 3. Major Port. | |
| 4. Land Customs Station. | |
| 5. Railway Station. | |
| 6. Is being sold. | 9. Notifications. |
| 7. Applicability of Sec. 9 and 14. | |

COMMENTARY.

1. Section analysed and explained:—1. Under Section 14 the Central Government is empowered—

(i) to appoint by Notification in the Official Gazette any person to exercise the powers of a Food Inspector under sections 10 and 11.

(a) at any major port, air port or land customs station in respect of any article of food which is being imported through such port or station ;

(b) in respect of any Railway Station or group of Railway Stations where food is being sold :

(ii) to authorize any Food Inspector in any State in which the major port, air port or land customs station or Railway Station is situate to exercise the powers of a Food Inspector under sections 10 and 11 instead of making any appointment under section 14(1).

2. Every person so appointed or authorised under sub section (1) of section 14 is to be deemed a Food Inspector for the purposes of this Act.

2. Object of this Section:—The object of this section is apparently to make the law relating to the prevention of food adulteration more comprehensive and effective and not to leave any place as a loop hole where the prohibited adulterated article of food can be imported, sold, exposed or stored for sale with impurity.

3. Major port:—All minor ports are excluded and the Central Government is authorised to make a provision under section 14 for major ports only. By section 3 (d) of The Sea Customs Act of 1878, "Customs Port" has been defined as meaning any place declared under section 11 to be a port for the shipment and landing

of goods. And under section 11 of the Sea Customs Act the Chief Customs Authority is authorised from time to time by notification in the official Gazette to —

- (a) declare the places which alone shall be ports for the shipment and landing of goods ;
- (b) declare the limits of such ports ;
- (c) appoint proper places therein to be wharves for the landing and shipping of goods, or of particular classes of goods;
- (d) declare the limits of any such wharf ;
- (e) alter the name of any such port or wharf; and
- (f) declare what shall, for the purpose of this Act be deemed to be a customs house, and the limits thereof.

4. Land Customs Station:—Under section 4 of The Land Customs Act (XIX of 1924) the Chief Customs Authority is authorised by notification in the Official Gazette—

- (a) to establish land customs station for the levy of land customs in any land customs area. The phrase “land customs area” is defined in section 2(g) of the said Act as meaning, “any area adjoining a foreign frontier for which a Collector of Land Customs has been appointed under section 3”.

5. Railway Station:—The word Railway has been defined in section 3 (4) of the Indian Railways Act (IX of 1890) as follows —

‘railway’ means a railway, or any portion of a railway for the public carriage of passengers, animals or goods, and includes —

- (a) all land within the fences or other boundry marks indicating the limits of the land appurtenant to a railway;
- (b) all lines of rails, sidings or branches worked over for the purposes of, or in connection with, a railway;
- (c) all stations, offices, warehouses, wharves, workshops, manufactories, fixed plant and machinery and other works constructed for the purposes of, or in connection with a railway; and
- (d) all ferries, ships, boats and rafts which are used on inland waters for the purposes of the traffic or a railway and belong to or are hired or worked by the authority administering the railway :

6. Is being sold:—The word “sale” has been defined in section 2 (XII), so as to include an agreement for sale, an offer

for sale, the exposing for sale or having in possession for sale and even an attempt to sell any article of food, whether for cash or on credit or by way of exchange and whether by wholesale or by retail, for human consumption or use, or for analysis any article of food. For commentary please refer to commentary given under Section 2, Act (XIII).

7. Applicability of sections 9 and 14:—Under section 9 the State Government is authorised to appoint by notification in the Official Gazette, Food Inspectors for the purposes of this Act and to exercise their powers within such local areas as the State Government may assign to them. This power is to be exercised by the State Government only subject to the provisions of section 14. Under section 14, only the Central Government is authorised by notification in the Official Gazette to appoint any person to exercise the powers of a Food Inspector under sections 10 and 11 in the places mentioned in section 14 (1) (a) (b). And under the proviso to section 14 the Central Government alone is empowered to authorise any Food Inspector in any State in which the major port, air port or land customs station or railway station is situate to exercise such powers. And every person so appointed or authorised under sub-section (1) of section 14 is to be deemed a Food Inspector for the purposes of this Act. So a Food Inspector appointed by the State Government under section 9 is not authorised to act as a Food Inspector under section 10 and 11 in respect of any areas mentioned in section 14 (1) (a) and (b). Section 9 applies only to those cases which are not covered by section 14.

Moreover under section 14 the Central Government is authorised to appoint any person to exercise the powers of a food inspector as given in section 14; while under section 9 the State Government is authorised to appoint food inspectors only such persons as have the prescribed qualifications and have not financial interest in the manufacture, import or sale of any article of food.

8 Articles of food with respect to which a food inspector appointed under section 14 (1) can exercise his powers under sections 10 and 11:—Under section 14 (1) (a) a food inspector can exercise his powers only in respect of an article of food which is being imported through such port or station as is mentioned in section 14 (1) (a) and in respect of any railway station or group of railway stations only where food is being sold.

9. Notifications :

U. P. Notifications : By notification No: 1065 (i) XVI (P.H.) 722-55 dated Feb. 9, 1956 published in U.P. Gazette Part I Page 245 the Governor is pleased to declare all municipalities, railway premises including railway stations and colonies and Cantonments as

"local areas" for the purposes of this Act and under Notification No. 10656 (ii) XVI-(P.H) 722-5 of even date published in the same Gazette at page 246 the Governor is pleased to declare Divisional Medical Officers of the railway premises including railway stations and colonies, as Food Inspectors for such areas.

SECTION 15

15. Notification of food poisoning. The State Government may by notification in the official Gazette, require medical practitioners carrying on their profession in any local area specified in the notification to report all occurrences of food poisoning coming within their cognizance to such officer as may be specified in the notification.

SYNOPSIS

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|--|--|
| 1. Section explained. | is of more than one person. |
| 2. Local area. | 9. Omission to report whether an offence where the public servant concerned has already obtained information from other sources? |
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COMMENTARY.

1. Section explained:—Under this section the State Government is authorised, by notification in the Official Gazette, to require medical practitioners carrying on their profession in any local area specified in the notification to report all occurrences of food poisoning coming within their cognizance to such officer as specified in the State Government notification.

2. Local area:—The term 'local area' has been defined in section 2 (VII) as meaning any area, whether urban or rural, declared

by the State Government by notification in the official Gazette, to be a local area for the purposes of this Act.

3. Penalty for omission to report on the part of the medical practitioner concerned:—No penalty is provided in the Prevention of Food Adulteration Act. But the omission is punishable u/s 176 of the I.P.C. Section 176 of the Indian Penal Code is reproduced below :—

“Whoever, being legally bound to give any notice or to furnish information on any subject to any public servant, as such intentionally omits to give such notice or to furnish such information in the manner and at the time required by law, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both ;

or, if the notice or information required to be given respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with simple imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees, or with both ;

or if the notice or information required to be given is required by an order passed under subsection (1) or section 565 of the Code of Criminal Procedure, 1898, with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.”

4. Ingredients for an offence u/s 176 I.P.C. This section requires:—

- (i) that the offender must be legally bound to give any notice or to furnish information on the required subject to a public servant;
- (ii) that he has intentionally omitted to give such notice or information in the manner and at the time required by law. Before a person can be convicted u/s 176 I.P.C. the prosecution is bound to prove the above ingredients.(a)

5. Legally bound to give notice or furnish information to any public servant:—To bring home the charge to the accused he must be shown to be legally bound to furnish information. Where a person is not legally bound to furnish information, section 176 I.P.C. is not applicable. Where a person is under legal duty to report certain facts and he fails to report them he must be pre-

(a) *Shrithar V State*—A.I.R. 1954 Him Pra. 67=1954 Cr. L 1465.

sumed to intend to conceal the same unless he can show that he had reason to believe that the authority to whom the report was due had information from other source.(b)

The duty to report must be cast by express enactment of the legislature and not merely by rules framed under any Act(c).

6. Omission to give report must be intentional :—Unless the omission to give notice is intentional Sec 176 I.P.C. does not apply(d). Where a person is under a legal duty to report certain facts and failed to report them he must be presumed to intend to conceal them. Where a person failed to give information to the police of the explosion of fire-works, which resulted in the death of a child, as required by a statute, it was held that he was guilty of the offence under Sec. 176 I.P.C.(e).

7. Proof of intention to omit to give report : Where under the terms of a license the holder was bound to give information to the Civil Supplies Department of the stock of cloth held by him and on being asked he gave a list with regard to mill made cloth in his shop, but omitted to include the mill made cloth stored in a rented godown elsewhere which was subsequently seized. It was held that the intention is to be presumed from circumstances and in the face of the requirements of the license and the non-disclosure of the godown and the accidental seizure of the cloth from the godown the conclusion is clear that the accused intentionally omitted to furnish information and is liable under Sec. 176 I.P.C.(f).

8. Position where the responsibility for giving information is of more than one person : Under the law as given in Sec. 176 I.P.C, each one of them is liable for the omission to give the required information. The mere fact that another person was also present at the time of the occurrence and was under similar obligation to report does not justify the omission to report(g).

9. Omission to report whether an offence where the public servant concerned has already obtained information from other sources ?—Where the public servant has already obtained information from other sources, omission to give information is not an offence under Sec, 176 I.P.C.(h). The fact that some persons bound to give information have given that information to the proper

(b) In re Pavallimanakkal—A.I.R. 1916 Mad. 493=27 I.C. 843=16 Cr. L.J. 219=17 M.L.T. 263=1915 M.W.N. 276.

(c) Hari Singh V Queen Empress - 25 P.R. 1894 (cr).

(d) Zeri Khan V Emperor - 30 I.C. 446=16 Cr. L.J. 622.

(e) Lahaimundul (1867) 7 W.R. (Cr.) 29.

(f) Lal Mohun Paul Vs. Tripura State—A.I.R. 1952 Tripura 18=1952 Cr. L.J. 1642.

(g) In re Pavallimanakkal Narayan—A.I.R. 1916 Mad. 493=27 I.C. 843=16 Cr. L.J. 219=17 M.L.T. 263=1915 M.W.N. 276.

(h) Dara Singh Vs Emperor—A.I.R. 1933 Lah. 515=1933 Cr. C. 774=144 I.C. 343=34 R.L.R. 712 (4 Cal. 623 Followed).

authority while others who also might be bound to give that information have omitted to do so is no ground for their prosecution and conviction under Sec. 176 I.P.C. (i)

10. Penalty for giving false information on the part of the medical officer concerned :— The Prevention of Food Adulteration Act provides no penalty for giving false information. But the penalty is prescribed in Sec. 177 I.P.C. which runs as follows :—

“Whoever, being legally bound to furnish information on any subject to any public servant, as such furnishes as true, information on the subject which he knows or has reason to believe to be false, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both :

or, if the information which he is legally bound to give respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”

11. Ingredients of an offence u/s 177 I.P.C. :— This section requires :—

- (i) that the alleged offender must be legally bound to furnish the required information to a public servant ;
- (ii) that he furnishes as true information on the required subject which he knew or had reason to believe to be false.

The prosecution has to establish both these ingredients to bring home the offence and the Court is bound to consider and decide also before convicting the accused that the accused knew or has reason to believe the information furnished to be false j)

12. Sec. 177 I.P.C. - Legally bound : A person is not guilty of an offence u/s 177 I.P.C. for furnishing false information to a public officer where he was not legally bound to furnish information(k). Sec. 177 I.P.C. has no application to a case in which a false statement has been made to the police by a person who was under no legal obligation or who was not legally bound to give that information. However, such a person may be liable for prosecution under Sec. 182 I.P.C. (l)

(i) Bhagwant Rao Vs Emperor - A.I.R. 1926 Nag. 217=26 Cr. L.J. 1489=90 I.C. 145 (4 Cal. 623, 20 Cal. 316 and 7 Mad. 436 Followed).

(j) Jagan Nath Vs Rex - A.I.R. 1950 Ajmer 19 (2)=51 Cr. L.J. 883

(k) Hari Chand Vs Crown—35 P.L.R. 544=152 I.C. 612-A.I.R. 1934 Lah. 626=7 R.L. 312=36 Cr. L.J. 176=15 Lah. 832

(l) Lakhani Vs Emperor - A.I.R. 1936 All 788-I.L.R. 1937 All 162=38 Cr. L.J. 57=1236 A.W.R. 905=1936 A.L.J. 1064=1936 Cr. Cases 1011 1936 All. L.R. 950=165 I.C. 769.

13 Who can file a complaint under sections 176, 177 I.P.C.

?— Section 95 Cr. P.C. lays down that "no court shall take cognizance of an offence punishable under sections 172 to 188 of the Indian Penal Code, except on the complaint in writing of the public servant concerned, or of some other public servant to whom he is subordinate."

So complaint in writing of the public servant concerned to whom the report of food poisoning had to be made or of some other public servant to whom he is subordinate is necessary for launching of prosecution under Sec 176, 177 I.P.C.

14. Notifications :—

U.P. Government: The U.P. Government through Notification No. 1065(iii) XVI (P.H) published in U.P. Gazette dated February 18, 1956 pages 245-246 has been pleased to direct that when a medical practitioner of a local area specified in Notification No. 10656 (i) XVI (P.H) 1-722-55, dated Feb. 9, 1955, in the course of his practice, becomes cognisant of a case of food poisoning he shall forthwith send to the Food Inspector of the local area concerned a report stating :

(a) the name, age and sex of the patient and the address of the premises where the patient resides, and particulars of food which in his opinion has caused such food poisoning.

SECTION 16**16. Penalties. (1) If any person—**

- (a) whether by himself or by any person on his behalf imports into India or manufactures for sale, or stores, sells or distributes, any article of food in contravention of any of the provisions of this Act or of any rule made thereunder, or
- (b) prevents a Food Inspector from taking a sample as authorised by this Act, or
- (c) prevents a Food Inspector from exercising any other power conferred on him by or under this Act, or
- (d) being a manufacturer of an article of food, has in his possession, or in any of the premises occupied by him, any material which may be employed for the purpose of adulteration or

- (e) being a person in whose safe custody any article of food has been kept under sub-section (4) of Sec. 10, tampers or in any other manner interferes with such article, or
- (f) uses any report or certificate of a test or analysis made by the Director of the Central Food Laboratory, or by a Public Analyst or any extract thereof for the purpose of advertising any article of food, or
- (g) whether by himself or by any person on his behalf gives to the purchaser a false warranty in writing in respect of any article of food sold by him, he shall, in addition to the penalty to which he may be liable under the provisions of Sec. 6 be punishable—
 - (i) for the first offence, with imprisonment for a term which may extend to one year, or with fine which may extend to two thousand rupees, or with both;
 - (ii) for a second offence with imprisonment for a term which may extend to two years and with fine :

Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgement of the Court, such imprisonment shall not be less than one year and such fine shall not be less than two thousand rupees,

- (iii) for a third and subsequent offences with imprisonment for a term which may extend to four years and with fine ;

Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgement of the Court, such imprisonment shall not be less than two years and such fine shall not be less than three thousand rupees

(2) If any person convicted of an offence under this Act commits a like offence afterwards it shall be lawful for the Court before which the second or subsequent conviction takes place to cause the offender's name and place of residence, the offence and the penalty imposed to be published at the offender's expense in such newspapers or in such other manner as the Court may direct. The expenses of such publication shall be deemed to be part of the cost attending the conviction and shall be recoverable in the same manner as a fine.

SYNOPSIS

1. Sec. 16 (1) (a).
2. Person.
3. Whether a person includes a child ?
4. The person liable for the penalties in case, Sec 5 is contravened by a Company incorporated or by a firm.
5. Whether by himself or by any person on his behalf.
6. Liability in a case of joint Hindu family.
7. Master and servant-Vicarious liability.
8. Principal and Commission agent or Arhati—Their liability.
9. Firm—its partners—their liability for the acts of their servants.
10. Liability of the manager of a mill.
11. Liability in case of incorporated company.
12. Brother-in-law selling adulterated ghee in the shop of the accused Liability.
13. Manufacture for sale.
14. Storing for sale.
15. Sells
16. Distributes.
17. Manufacturing of article of food not of the nature, substance or quality which it purports to be—Evidence for conviction.
18. Rape-seed oil found mixed with mustard oil—Liability.
19. Sale of hot milk adulterated with water and deficient in milk fats.—If an offence ?
20. Adulterated food whether kept for sale when presumption can be drawn.
21. Failure to publish notice as prescribed by the rules in respect of 'Jilebi' which contained ghee with 20% fat, if an offence ?
22. Prosecution concerning sale of adulterated ghee. Duty of the prosecution.
23. Ghee seized at Railway Station and found adulterated. Whether an offence ?
24. Constructive possession of the accused. Whether amounts to storing for sale ?

25. Storing for sale of adulterated article—An offence for whatever use it may have been sold.
26. Article in a shop or house whether intended for sale.—Presumption.
27. Burden of proof, whether article adulterated?
28. Conviction of a person other than the vendor—Accused must be proved to be aware of adulteration.
29. Deceptive description
30. Sale of wheat flour mixed with barley as pure wheat flour. Fact of amount of adulteration being negligible or universally tolerable whether effects conviction? Offence technical only.
31. Attempt to commit an offence under the Prevention of Food Adulteration Act—Whether an offence?
32. Adulteration an offence, whatever be the proportion of mixture.
33. Purpose of sale or purchase, immaterial.
34. Where extraneous matter mixes up in the process of collection, preparation etc. whether an offence?
35. Abetment whether an offence under the Prevention of Food Adulteration Act?
36. Definition of abetment and punishment for the same.
37. Accused taking consignment of mustard oil at Railway Station for sale. Fact that that accused had no time to examine goods. If good defence?
38. Customer's demand for milk means pure milk.
39. Liability of a person selling ghee which is below standard.
40. Cases where offence held committed.
41. Cases where offence held not committed.
42. Definitions and standards of qualities of some of the common articles of food as given in the appendix B of the rules for facility of reference are reproduced below.
43. Mens Rea.
44. Sec. 16 (1) (b) (c)
45. Prevention and what constitutes.
46. Sanitary Inspector not authorised by lawful authority to inspect food Resistance to such inspection, whether an offence under the Act?
47. Sec. 16 (1) (d).
48. Possession—what it means.
49. Section 16 (1) (e).
50. Section 16 (f).
51. Rule concerning advertisement of an article of food.
52. Section 16 (1) (g).
53. Warranty what it is.
54. False warranty.
55. Sale of article under warrant of purity Article found mixed with light impurity Whether an offence?
56. Article of food assumed commonly to contain foreign

- admixture not injurious to health—offer for sale of such article found to contain only such mixture Implied warranty by seller not broken
57. Warranties in matters of civil liability may be expressed or implied.
 58. Effect of breach of warranty—civil remedy
 59. Invoice is no warranty under the Act.
 60. Defences open or not open to the accused.
 61. Penalties for offences under section 16.
 62. Powers of the Court under the Probation of Offenders Act, 1958 (20 of 1958) concerning penalties.
 63. The Bill No. 12 of 1958 providing for further penalties for offences under the Act
 64. Powers of Magistrate in reducing penalties.
 65. Benefit of doubt.
 66. Circumstantial evidence.
 67. Burden of proof.
 68. Duty of the Court.
 69. Interpretation of evidence.
 70. No prohibition against inconsistent or alternative plea.
 71. The court which can try an offence under the Act.
 72. Procedure for trial of offences under this Act.
 73. Procedure according to Schedule II of the Cr. P.C. in case of offences under laws other than the Indian Penal Code.
 74. Summary trial.
 75. Place of enquiry or trial.
 76. Nature of the examination u/s 342 Cr. P.C. Its non-observance—Effect.
 77. Applicability of section 342 Cr. P.C. in summons cases.
 78. Applicability of Section 342 Cr. P.C. to summary trials.
 79. Contents of charge.
 80. Special rules of evidence provided in the Act.
 81. Appeal, Revision and reference.

COMMENTARY

1. **Sec 16 (1) (a):** Under this sub-clause a person is liable to punishment who himself or through any person on his behalf imports into India or manufactures for sale, or stores, sells or distributes any article of food in contravention of the provisions of this Act or of any rule made thereunder. This sub-section provides for the punishment of a person who acts in contravention of the provisions of Section 5 and 7 of this Act which are reproduced below :—

S. 5. Prohibition of import of certain articles of food—No person shall import into India —

- (i) any adulterated food ;
- (ii) any misbranded food ;
- (iii) any article of food for the import of which a license is prescribed, except in accordance with the conditions of the license ; and
- (iv) any article of food in contravention of any other provision of this Act or of any rule made thereunder.

Section 7. Prohibition of manufacture, sale etc., of certain articles of food :

No person shall himself or by any person on his behalf manufacture for sale, or store, sell or distribute :—

- (i) any adulterated food ;
- (ii) any misbranded food ;
- (iii) any article of food for the sale of which a license is prescribed, except in accordance with the conditions of the license ;
- (iv) any article of food the sale of which is for the time being prohibited by the Food (Health) Authority with a view to preventing the outbreak or spread of infectious diseases ; or,
- (v) any article of food in contravention of any other provision of this Act or any rule made thereunder.

For commentary on sections 5 and 7 please refer to the commentary given under each of these sections.

2. Person : The word 'Person' is not defined in the Act and so we have to take the definition of the word as given in the General Clauses Act (X of 1897) section 3 (42) which runs as follows:—

"person" shall include any company or association or body of individuals, whether incorporated or not."

So the word person not only means an individual but also a company. The word company is defined in section 17 (2) explanation (a) of this Act which runs as follows :—

- (a) 'company' means any body corporate, and includes a firm or other association of individuals and
- (b) 'director' in relation to a firm means a partner in the firm.

The subject is already dealt with under Sec. 5, so please refer to the same for further commentary.

3. Whether a person includes a child ?—See commentary under Sec. 7.

4 The person liable for the penalties in case Sec. 5 is contravened by a company incorporated or by a firm :—See commentary under sections and 17.

5. Whether by himself or by any person on his behalf :— See commentary under Section 7.

6. Liability in a case of joint Hindu family :— Please refer to the commentary given under Section 7.

7. Master and servant—Vicarious liability :— See commentary under Section 7.

8. Principal and Commission Agent or Arhati—Their liability :— See commentary under Section 7.

9. Firm—Its partners—their liability for the acts of their servants : See commentary under Section 7.

10. Liability of the Manager of a Mill :— See commentary under Section 7.

11. Liability in a case of an incorporated company :— Please see commentary under Section 7. Where in a trial of an offence under Section 16 (1) against a Co-operative Milk Society the evidence disclosed that the day to day business of selling the milk was done by the clerk of the society and the secretary who was only the honorary secretary, was not going to the society daily and the business was kept in the hands of the clerk with a check over by the secretary, it would not make the secretary a person who at the time of the offence was incharge or was responsible to the society for the conduct of the business within the meaning of section 17 (1). In the absence of such evidence the conviction of the secretary under section 16 (1) cannot be upheld (a).

12. Brother-in-law selling adulterated ghee on the shop of the accused—liability :— See commentary under Section 7.

13. Manufacture of sale :— See commentary under Section 7.

14. Storing for sale :— See commentary under Section 7.

15. Sells :— The word sale has been defined in Sec. 2 (XIII) of the Act. For commentary please refer to the commentary given under Sec. 2 (13) of the Act.

16. Distributes : See commentary under Section 7.

17. Manufacturing of article of food not of the nature, substance or quality which it purports to be—Evidence for conviction : For conviction of a person for having manufactured an article of food which was not of the nature, substance or quality which it purported to be there must be evidence that he did in fact manu-

(a) The Public Prosecutor Vs R. Karuppan—A.I.R. 1958 Mad. 183 (1958) 1—M.L.J. 20—71 M.L.W. 78—1958 All. W.R. Sup 27 (2)

facture the article (b).

18. Rape seed oil found mixed with mustard oil—liability

It is true that small quantity of rape seed oil is found almost invariably in mustard oil. But when the Public Analyst's report makes it clear that the proportion of rape seed oil in the sample of what was sold as pure mustard oil is much more than would be found in the ordinary course, the person found selling can be convicted of the charge of exposing for sale and selling it as pure mustard oil (c).

19. Sale of hot milk adulterated with water and deficient in milk fats—if an offence: The vendor who sold 'hot milk' which was found on analysis not to be of the nature, substance and quality prescribed by the rules was prosecuted. It was contended on behalf of the accused that no offence was committed as the Act did not apply to the case of the sale of 'hot milk' and that water was added to the milk only to prevent its boiling over in the heating and that the purchaser knew that the water was added to the milk sold. Held, negating the contention, that having regard to the definition of milk as given in Sec. 7 of the Madras Prevention of Adulteration Act No. III of 1918, milk does not cease to be milk within the meaning of the Act when it is sold as not milk. The Act itself makes no distinction between raw and hot milk and provides no exception in the case of hot milk. 'Hot milk' is under the Act nothing but milk in its natural condition which has been made hot and it should contain the prescribed minima of milk fat and milk solids. When it is found that on account of adulteration with water or extraction, the prescribed percentages are diminished, the person who sells that milk whether in raw state or hot milk infringes the prohibition. The material provisions of the Act do not postulate that for establishing the offence of adulteration, it is rather necessary to prove that the intention was to increase the bulk or measure or debase the quality or that the intention was of fraudulent nature. Hence the fact that the vendor of hot milk added water to the milk merely to prevent its boiling over in heating cannot affect the question of the liability for the adulteration. Nor is the knowledge and awareness of the purchaser that water is added to the milk material, and the object and the policy of the statute is to protect the public by prohibiting the sale in any circumstances of adulterated milk or milk which does not come up to the prescribed standard of purity. (d)

(b) *Frej Mohan Dass Vs Emperor*, A.I.R. 1948 All. 177-49 Cr. L. 175-1948 A.L.J. 1-1948 O.W.N. 51-1947 A.W.R. H.C. 308.

(c) *Frej Mohan Dass Vs Emperor*, A.I.R. 1948 All. 177-49 Cr. L. 175-1948 A.L.J. 1-1948 O.W.N. 51-1947 A.W.R. H.C. 308.

(d) *Public Prosecutor Vs. M. K. Koolayya*—54 M.L.W. 408-1945 M.W. 669-1946 2 M.L.J. 711-1 L.L.R. (1947) Mad. 832-231 L.C. 83-48 Cr. L.J. 10 = A.I.R. 1947 Mad. 184.

20. Adulterated food whether kept for sale—when presumption can be drawn.—In order that a presumption may be drawn that any food found in possession of a person was kept by him for sale, it must be established that he was in the habit of storing like articles for sale. The provision can have no application where the case is that the accused was entrusted with a pail of milk which was found to be adulterated, to be delivered at the same hotel to which the accused was taking his own milk. It cannot be said that the accused was the vendor or in possession of the milk for the purpose of sale. Accordingly the accused cannot be held guilty of having contravened the provisions of the Madras Prevention of Adulteration Act 1918 or the Rules made thereunder(e).

21. Failure to publish notice as prescribed by the rules in respect of 'Jilebi' which contained ghee with 20% fat is an offence.—Where under the rules it is provided that where a sweetmeat is fried or otherwise cooked in ghee, such ghee for the purpose of rule 28 B of the Madras Prevention of Adulteration Act, 1918 shall be deemed to be an ingredient of sweetmeat. Failure to publish a notice in the manner prescribed by Rule 28 B in respect of 'Jilebi' which on seizure is found to contain certain ghee with 20% of fat would amount to an offence under Rule 23 B read with rule 29 of the Madras Act(f).

22. Prosecution concerning sale of adulterated ghee—Duty of the prosecution.—Relevant part of the declaration with regard to ghee is that "ghee is the pure clarified milk fat of cow, buffalo or cow and buffalo." The presumption in case of prosecution for sale of adulterated ghee would accordingly be that the ghee in the sample contained some substance other than the milk fat of cows or buffaloes. But in as much as in the case of a ghee the notification is more severe than the condition laid down in section 6 of the Bengal Food Adulteration Act, 1919 the presumption would be of very little help to the prosecution. Under section 6 ghee may contain curds and prosecution would have to show that the additional constituents presumed to be present were something other than curds. The essential thing is that the rule under the Act should refer to deficiencies in or additions to any article of food; that is to say they must lay down the absence of something or the presence of some thing. The prosecution may prove either that the ghee does not fulfil the conditions laid down in section 6 or it does not fulfil such conditions as are prescribed by Local Government. Although the ghee may be unadul-

(e) Public Prosecutor Vs. Arjuna Rao—1947 M.W.N. 229-60 L.W. 309=A.I.R. 1947 Mad. 374=(1947) 1 M.L.J. 127.

(f) Public Prosecutor Vs. Parameshwara Iyer—60 L.W. 434=1947 M.W.N. 408=A.I.R. 1947 Mad. 429=(1947) 2 M.L.J. 71.

terated it may still be of poor quality and section 4 of the Bengal Act applies to such a case (g).

Under section 6 read with section 21 of the Bengal Food Adulteration Act, 1919 all that the prosecution has to establish is that the two samples of mustard oil which were admittedly in the shop and which were sold were not derived exclusively from mustard seed.(h)

The prosecution need not prove that the adulterated food stuff would be injurious to public health. It is sufficient to show that the article is not what it purports to be or that it is not of the standard required by the rules.(i)

23. Ghee seized at Railway Station and found adulterated whether an offence?—Two tins of ghee consigned to a firm of which the accused was partner, were seized at the railway station and were found to be adulterated. Held that the accused cannot be convicted as it could not be said that the accused was storing ghee for sale at the railway station (j)

Where a consignment of adulterated mustard oil is found by the Sanitary Inspector in possession of the accused carter when it was found in transit for the accused's shop in the ordinary sense of the expression the goods in question were not being stored for sale, the presumption does not arise under section 6 (4) of the Bengal Act, in such a case as the possession of the accused is merely constructive and not actual.(k)

24. Constructive possession of the accused—whether amounts to storing for sale?—Where a person is prosecuted for storing adulterated food for sale, it must ordinarily be proved affirmatively that such food is actually being sold and, such storage cannot be taken to include transit to place of storage unless the adulterated food in question is actually in the physical possession of the person. Possession must mean actual physical possession and cannot be extended to include constructive possession.(l)

(g) Nowranga Lal Vs. Midnapure Municipality—A I.R. 1940 Cal. 324=I.L.R. (1940) 2 Cal. 82=44 C.W.N. 615=41 Cr. L.J. 849=13 R.C. 152=190 I.C. 186.

(h) Sawal Ram Aggarwala Vs. Emperor—A.I.R. 1934 Cal. 858=(1934) Cr. C-1372=7 R.C. 389=36 Cr. L.J. 372=62 Cal. 373=153 I.C. 631.

(i) Rameshwar Chaudhry Vs. Purulia Municipality—14 P.L.T. 146=A.I.R. 1933 Pat. 193=I.R. (1933) Pat. 190=34 Cr. L.J. 572=(1933) Cr. C. 586=143 I.C. 65.

(j) Chairman District Board Vs. Sreenibash Purohat—A-I R. 1941 Cal. 491=43 Cr. J.J. 107=14 R.C. 359=197 I. C. 68

(k) Sachi Nandan Biri Vs. Chairman Midnapore District Board—A I.R. 1940 Cal. 213=44 C.W.N. 173=41 Cr. L.J. 582=I.L.R. (1940) 1 Cal. 333=13 R.C. 10=188 I.C. 398.

(l) Do.

Possession under section 6 (4) Bengal Act must mean actual physical possession.—Mere possession of any of the articles referred to therein is not an offence under the Act but from the fact of possession the presumption is to be drawn which will establish an offence. That being so the word 'possession' must be given a strict interpretation and cannot be extended to include constructive possession. The fact that the ghee was in a cart for the purpose of being carried and was not deposited in any place for the purpose of sale, in other words, that it was in transit, need not militate against the presumption of storing for sale(m).

25. Storing for sale of adulterated article— an offence for whatever use it may have been sold :— Where a person stores for sale in his shop mustard oil which does not conform to the standard required by law he exposes himself to the penalty provided by law even though he marked it as fuel oil. It is not an essential of the offence under the Act that what is done, viz, the storing etc. should be done with a view to or for the purpose of human consumption(n).

26. Article in a shop or house whether intended for sale
Presumption — In order to make out a case that an offence under section 16 of the Prevention of Food Adulteration Act, 1954 has been committed, it should be established that the articles of food, a sample of which was sought to be taken by the Inspector and which was prevented, was intended for sale. If the article was in a shop then there would be a presumption that it was intended for sale but where it was in a house it should be proved that it was intended for sale. Only then the prevention of an Inspector for taking sample would amount to an offence under section 16 (1) (b) of the Act (o).

The fact that the ghee in question was taken from a shop where sweetmeats and pakoras were offered for sale and indeed from a frying pan in which other sweetmeats and pakoras were being made, raises a presumption that the sweetmeats and the pakoras in the shop had been manufactured for sale and that the accused was manufacturing and offering for sale sweetmeats and pakoras as containing pure ghee which contained the alleged impure ghee (p).

27. Burden of proof, whether article adulterated ?—It is

(m) Ram Charita Ram Bhakat Vs. Chairman of District Board Rajshahi—A.I.R. 1937 Cal. 710=41 C.W.N. 1213=39 Cr. L.J. 252=10 R.C. 469=1.L.R. (1938) 1 Cal. 420=172 I.C. 869.

(n) Chairman, District Board, Midnapore Vs. Atul Chandra Pal—A.I.R. 1933 Cal. 619=37 P.W.N. 511=57 C.L.J. 429=(1933) Cr. C. 998=6 R.C. 146=34 Cr. L.J. 1081=145 I.C. 841.

(o) Public Prosecutor Vs. Samivenkataraman—(1958) M. L. J. (Cr.) 236.

(p) Nebhandas Holla Ram Vs. Emperor—A.I.R. 1939 Sindh 337=(1940) Car. 91=41 Cr. L.J. 246=12 R.S. 192=185 I.C. 882.

true that the burden of proof that the article of food is adulterated, lies on the prosecution but that burden may in fact be assisted or even completely discharged by the admission of the accused himself (q).

Section 6 (4) of the Bengal Act 1919 reverses the ordinary rule of evidence which rests the onus of proof in a criminal trial on the prosecution; it will therefore have to be strictly construed. The person against whom the presumption under section 6 (4) is to be drawn must be shown to be a person who is in the habit of storing ghee for sale (r).

The Evidence Act does not recognise any differential treatment between prosecution and defence on the question of onus of proof. It is of course a perfectly correct and salutary principle of criminal jurisprudence that 99 guilty persons may escape, but one innocent person must not suffer. But all that the above maxim means is that in a criminal trial the degree of probability (of guilt) has got to be very much higher almost amounting to a certainty than in a civil proceedings, and if there is a slightest reasonable or probable chance of innocence of an accused, the benefit of it must be given to the accused. But that is quite a different thing from contending that even where the burden of proof, say of proving an exception is on the accused the term 'proved' should be differently and more liberally construed than when the burden of proof is on the prosecution. The Evidence Act does not contemplate and does not lay down that the satisfaction which is required to be caused in the mind of a prudent man before acting on or accepting the prosecution story is to be of a different kind or degree from the satisfaction which is required when the accused has to discharge the burden which is cast upon him by law. Cases decided in England on the basis of the English law ought not to be applied rigidly to the construction of Indian statute unless there was a corresponding statute in England. In India the law is governed by Sec. 3 and 105 of the Evidence Act, where proof receives a statutory definition and where it is stated that a Court shall presume the absence of circumstances bringing a case within the exceptions unless the accused discharges the burden of proving the existence of such circumstances. Strictly speaking the test is not the absence of reasonable doubt though that was often a convenient way of expressing what was meant by proof. The test is really the estimate which a prudent man makes for the probabilities, having regard to what must be his duty as a result of his estimate. In each case, whether proof of the case for the prosecution or proof of the case

(q) See judgement (p) on page 237.

(r) Ram Charita Ram Bhakat Vs. Chairman of District Board, Ranchahi—A.I.R. 1937 Cal. 710=41 C.W.N. 1213=39 Cr. L.J. 252=10 R.C. 452—I.L.R. (1933) 1 Cal. 420=172 I.C. 869.

set up by the accused, it is the estimate of probabilities arrived at from this practical standpoint by a prudent man. The question, therefore, is really whether on an estimate of probabilities which a prudent man makes, the explanation of the defence can be accepted. If the Court feels that the story of an accused does not necessarily seem to be true but appears reasonably true, it is really referring to a state of doubt and, of course, the benefit of doubt has to be given to the accused. But where it is not the position that the explanation of the accused does not merely appear to be true, but the position is that the explanation of the accused is definitely false, there cannot be any reasonableness about it. There cannot be any question of the said explanation being even *prima facie* sensible or probable (s).

The powers of the Appellate Court are exactly the same in the case of an order of acquittal as in the case of an order of conviction. The duty of the Appellate Court is to review the entire evidence to make up its mind upon that evidence and reverse the decision of the lower Court if it be satisfied upon a consideration of the evidence that the decision is unjustified. The presumption of innocence with which the accused starts continues right through until he is held to be guilty by the final Court of Appeal. If he is acquitted by the Court of first instance the presumption of innocence of course remains. The presumption is absolute. It is not strengthened by an acquittal nor weakened by a conviction in the trial Court(t).

28. Conviction of a person other than the vendor—Accused must be proved to be aware of adulteration?—There is nothing in section 6 (U.P. Prevention of Adulteration Act 1912) to preclude a person who is not the vendor, but who is exposing the goods for sale from pleading that he himself was ignorant of the quality etc. of the ghee which the vendor was offering for sale. This plea would equally be available to a person who is accused of abetment of sale. These classes of persons mentioned in section 4 (U.P. Act) other than actual seller, are not precluded from setting up a plea of ignorance of adulteration. In order to justify the conviction of a person who is not himself the actual vendor, it is necessary to prove the existence of circumstances from which it can reasonably be inferred that he was aware of the adulteration(u).

(s) Harprasad V. State A.I.R. 1952 Bom. 184=53 Bom. L.R. 938.

(t) Emperor V. Nur Ahmed A.I.R. 1934 All. 842=3 A.W.R. 783=151 I.C. 114=1934 A.L.J. 839=1934 All. L.R. 793=1934 Cr. C. 1028=35 Cr. L.J. 1229.

(u) Municipal Board Bareilly V. Ram Gopal—(1940) A. L. J. 653=A.I.R. 1940 All 517=42 Cr. L.J. 243=1940 A.W.R. 482=13 R.A. 300=I.L.R. (1940) All 643=192 I.C. 83.

29 Deceptive description :— Where there are in the description of the article the words “mustard oil” as the concluding and the substantive portion of the description with some objectional description preceding the substantive name although the preliminary adjectival description may give the intending notice that what he is getting is not pure mustard oil, yet this is not sufficient compliance with law (Rule No 37 of the Central Rules)(v).

Where the oil sold was actually found on analysis to be not genuine in the sense that it was not an article which it purported to be or was presented to be or if it fell below the standard prescribed by the rules, the vendor would become liable to penalty. Such a case is not affected by the placing of placard outside the shop to indicate that the mixed oil was obtainable therein which was not fit for human consumption(w).

30. [See rule 37] Sale of wheat flour mixed with barley as pure wheat flour— Fact of amount of adulteration being negligible or universally tolerable, whether affects conviction, Offence technical only :— The Act does not exempt from punishment a person who sells as pure wheat flour, a flour which is not pure but contains some mixture of barley however slight. The fact that the amount of adulteration is negligible or is universally tolerated may affect the sentence but cannot affect the conviction. Where the only evidence of adulteration consists of the Chemical Examiner's report, which merely shows that barley flour was detected in the wheat flour sold by the applicant the offence cannot be considered to be otherwise than technical x).

31. Attempt to commit an offence under the Prevention of Food Adulteration Act—Whether an offence?—The word sale in section 2 (Act XIII) of the Act has been defined as including an attempt to sell any article of food. So under section 16 (1) (a) any attempt to sell any article of food in contravention of the provisions of this Act or of any rules made thereunder is an offence. But in all other cases e.g. attempt to import or attempt to manufacture etc. any article of food will be no offence under the Act as section 511 of the I.P.C. is not applicable to offence under the Local or Special Laws, vide section 40 I.P.C. The Prevention of Food Adulteration Act, 1954 is a special law as defined in section 41 I.P.C. being a law applicable to a particular subject.

It was similarly held in a case under the Bengal Food Adulteration Act 1919 that section 511 I.P.C. can have no application to an

(v) Karnidan Sarda Vs. Emperor—16 P.L.T. 655=8 R.P. 205=36 Cr. L.J. 1439=A.I.R. 1935 Pat. 521=2 B.R. 8=(1935) Cr. C. 1279=159 I.C. 728.

(w) Rameshwar Chaudhry Vs. Purulil Municipality—14 P.L.T. 146=A.I.R. 1933 Pat. 193=I.R. (1933) Pat. 190=34 Cr. L.J. 572=(1933) Cr. C. 586=143 I.C. 65.

(x) Budh Sen Vs. Emperor—A.I.R. 1934 All. 329=6 R.A. 694=35 Cr. L.J. 681 (1)=148 I.C. 384.

attempt to commit an offence under that Act. (y)

32 Adulteration an offence whatever be the proportion of the mixture :—The fact that a merchant mixes inferior oil with superior oil necessarily leads to the conclusion that it was his intention to sell the mixture as superior oil. The proportion of mixture is immaterial. Where the accused is found to sell oil which is a mixture of 75% Gingelly oil and 25% groundnut oil the accused is guilty even though the mixture is sold not as gingelly oil but as groundnut oil. (z)

33. Purpose of sale or purchase immaterial :—The prohibition is against the addition of any ground nut or any other oil to gingelly oil intended for sale and against sale of any gingelly oil to which any such addition has been made. The rule does not make any reference to the purpose of the addition or to the purpose for which it is sold. The prohibition is absolute for whatever purpose the consumer may take it or the seller may sell it. The policy of the law apparently is that even if it is sold for lighting purpose and not as food the consumer may use it for food and it would be deleterious for his health. Hence a person who sells gingelly mixed with groundnut oil not as food but for lighting purpose is guilty(a). The sale as defined in the Act includes a sale for human consumption as also for use.

34. Where extraneous matter mixes up in the process of collection, preparation etc.—Whether an offence ?—The mere presence of some foreign matter in some small quantity is not necessarily an offence. The exception especially excludes the case where without fraud any extraneous material has in the process of collection, preparation or conveyance unavoidably becomes mixed with the food(b).

35. Abetment—whether an offence under the Prevention of Food Adulteration Act ?—The Prevention of Food Adulteration Act is silent as to whether abetment of the offences

(y) Ram Charita Ram Bhakat Vs. Chairman of District Board, Rajshahi—A.I.R. 1937 Cal. 710=41 C.W.N. 1213=39 Cr. L.J. 252=10 R.C. 469=I.L.R. (1938) 1 Cal. 420=172 I.C. 869.

(z) Public Prosecutor Vs. Seshagiri Rao—A.I.R. 1949 Mad. 155=1948 M.W.N. 484=1948—2 M.L.J. 1949=50 Cr. L.J. 198.

(a) Public Prosecutor Vs. Mohideen—A.I.R. 1948 Mad. 218=1947 2 M.L.J. 456=1948 M.W.N. 59.=60 M.L.W. 749. In re Venka Bhimaraju A.I.R. 1948 Mad. 623=50 Cr. L.J. 839=1949 M.W.N. 284=1949—1 M.L.J. 198 (A.I.R. 1948 Mad. 218 Rel.)

(b) Sarup Lal Vs. Emperor—A.I.R. 1936 Pat. 636=8 B.R. 137=9 R.P. 264=17 P.L.T. 953=38 Cr. L.J. 192= (1936) Cr. C. 1067=166 I.C. 206.

under the Act is punishable or not. Section 40 of the I.P.C. makes the abetment of an offence under any special law also punishable. According to section 40 of the I.P.C. the word offence given in sections 109, 110, 112, 114, 116, and 117 is meant to denote, "a thing punishable under this Code or under special or local law." "The said sections of the I.P.C. deal with abetment of offences. The Prevention of Food Adulteration Act is a special law as it deals with special subject. So the abetment of any offence under the Prevention of Food Adulteration Act is also an offence and will be punishable with the same punishment as provided for the original offence according to section 109 of the I.P.C.

In a case under Sec. 4 of the U.P. Prevention of Adulteration Act, 1912 it was held that the law of abetment will apply on the ground that no express provision for abetment of the offence is made under the Act. The penalty for abetment is therefore the same as the penalty for the original offence. Where a person kept a shop and was a commission agent for selling ghee brought to him by various men. One D brought ghee to his shop and sold it. Ghee was found to be adulterated. Held it would have been impossible for D to have exposed the ghee for sale or to have sold it if the shop keeper had not agreed to his doing so at the shop. Therefore, he abetted the offence. The mere arranging of the sale by D will not show that the shop keeper did not take part in the sale(a).

36. Definition of Abetment—and punishment for the same :—The word abetment has been defined in section 107 of the I.P.C. and the punishment for abetment if the offence is committed in consequence of such abetment is given in section 109 of the I.P.C. Sections 107 and 109 of the I.P.C. are reproduced below :—

107. Abetment of a thing.—A person abets the doing of a thing, who—

First—Instigates any person to do that thing ; or

Secondly.—Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act of illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing ; or

Thirdly.—Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1. A person who by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to

disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Explanation 2.—Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

109. Punishment of abetment if the act abetted is committed in consequence and where no express provision is made for its punishment. Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.

Explanation:—An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment.

Under section 16 (1) (a) of the Prevention of Food Adulteration Act a person is guilty where he himself or through any person on his behalf imports into India or manufactures for sale or stores, sells or distributes, any article of food in contravention of any of the provisions of this Act or of any rule made thereunder. So under this sub-section not only the actual vendor is liable but also any person on whose behalf he does any of the above acts is liable. So this sub-section makes the abettor also equally liable.

37. Accused taking consignment of mustard oil at Railway Station for sale—Fact that the accused had no time to examine goods – if good defence ?—The accused took delivery of some tins of mustard oil at the railway station for the purpose of selling them. On the same day, while the goods were actually on the railway premises, a sample was taken from these tins by a Sanitary Inspector and it was found that the mustard oil contained therein was adulterated. It was held that although the goods had not actually left the railway premises, they were nevertheless being stored for sale by the accused. The requisite initial onus had been discharged by the prosecution. The accused came into physical possession of the consignment as soon as he took delivery thereof at the railway station and from the moment that he took such delivery until the goods were actually exposed for sale in a shop there could be no doubt that he was actually storing them with a view to their ultimate disposal by sale. The fact that he could have had no opportunity to examine the nature of the goods between the time he took delivery of them and the time when a sample was taken

was no defence, in view of section 9 (3) of the Bengal Food Adulteration Act, 1919. (d) Same is the position under the Prevention of Food Adulteration Act.

38. Customer's demand for milk means pure milk.—Where a customer asks for milk he should be understood to be desirous of purchasing pure milk : and if he is supplied skimmed milk by the seller, who does not make it clear that the milk he was supplying was skimmed milk, he is guilty. Similarly, where a person gives out that the milk was for sale at his shop, he should be taken to offer to sell pure milk, and not skimmed milk; and while he is offering to sell milk if he supplies skimmed milk, he is guilty (e).

39. Liability of a person selling ghee which is below standard.—If a person sells ghee which is found to be below standard then he is liable to conviction unless he successfully establishes the defence open to him under the Act (f).

✓ **40. Cases where offence held committed.**—1. Milk purchased by Sanitary Inspector, samples taken out-milk found adulterated. Held offence committed (g).

2. Even when a purchaser of adulterated food is a public officer, the offence is committed in respect of the adulterated food purchased by him as such public officer (h).

3. Service of ghee to customers by hotel-keepers amounts to sale. Ignorance of nature, or quality of article is no defence (i).

4. Milk offered for sale found to contain fourteen percent of water. Held accused is guilty. The fact that the milk was not otherwise adulterated is immaterial (j).

(d) Hari Rakhak Dutt Vs. Chairman, District Board, Birbhum—A.I.R. 1941 Cal. 150=72 C.L.J. 531=44 C.W.N. 1139=42 Cr. L.J. 522=12 R.C. 422=194 I.C. 186.

(e) Dukni Vs. Emperor—A.I.R. 1936 All 148=(1936) A.L.J. 77=8 R.A. 735=37 Cr. L.J. 453=(1936) A.W.R. 192 (2)=161 I.C. 356.

(f) Emperor Vs. Nur Ahmed—A.I.R. 1934 All. 842=7 R.A. 88=35 Cr. L.J. 1229=1934 A.L.J. 839=3 A.W.R. 783=151 I.C. 114.

(g) Public Prosecutor V Narayana Singh—A.I.R. 1944 Mad. 236=(2944 1 M.L.J. 16=57 L.W. 15=45 Cr. L.J. 724=17 R.M. 114=1944 M.W.N. 559=214 I.C. 94.

(h) Gobindram Jamiatrai V Karachi Municipal Corporation—A.I.R. 1938 Sindh 218=11 R.S. 80=40 Cr. L.J. 7=(1939) Kar. 191=178 I.C. 119.

(i) Public Prosecutor Vs. Narayana Ayyar—A.I.R. 1940 Mad. 173=50 L.W. 790=41 Cr. L.J. 377=(1939) M.W.N. 1128 (1)=12 R.M. 681=188 I. C. 785.

(j) Public Prosecutor Madras Vs. Panchkarla Sooramma—A.I.R. 1941 Mad. 617=1941 M.W.N. 379=(1941) 1 M.L.J. 716=42 Cr. L.J. 795=14 R.M. 244=195 I.C. 713.

5. Honey sold with admixture of 38% of cane sugar, as pure honey—Though cane sugar is innocuous, fraudulent intention of seller is obvious—accused guilty (*k*).

6. Offer for sale of the said mixed honey is also an offence and as such punishable (*l*).¹

7. The accused was charged with having mixed 50% of mahua flower, coffee husk and cereal with coffee prepared by him. On the label on the packets seized by the health officer appeared the words "Coffee powder 50% Indian Chicory 50%". It was held that the goods seized were adulterated and the accused was guilty (*m*).

8. Sale as milk a mixture of milk and water is an offence (*n*).

9. Sweetmeat fried or otherwise cooked in ghee for sale which contained 20% of fat. Held offence committed (*o*).

10. The fact that a merchant mixes inferior oil with superior oil necessarily leads to the conclusion that the intention of the merchant is to sell the mixture as superior oil. The proportion of mixture is immaterial (*p*).

11. Where a person sells as pure wheat flour a flour which is not pure but contains some mixture of barley however slight. The fact that the amount of adulteration is negligible or is universally tolerated may affect the sentence but cannot affect the conviction (*q*).

12. Moisture content of butter in excess of statutory maximum given in rule (46). Practical impossibility of keeping the moisture content at or below the statutory level is no defence (*r*).

41. **Cases where offence held not committed :** 1. Adulterated ghee kept in a shop, not offered for sale but for being tested.

(*k*) Public Prosecutor Vs. Sannidhi Sriranganayakulu 1949 M.W.N. 282 = 1949 - 2 M.L.J. 15 = 50 Cr. L.J. 893 = A.I.R. 1949 Mad. 629.

(*l*) Do.

(*m*) In re Ismail Abdulla Sait A.I.R. 1945 Mad. 68 = 1944 - 2 M.L.J. 336 = 57 M.L.W. 590 = 1944 M.W.N. 687 = 218 I.C. 302 = 46 Cr. L.J. 456.

(*n*) Narayana Iyer A.I.R. 1933 Mad. 99 = 140 I.C. 260 = 1932 M.W.N. 1350 = 34 Cr. L.J. 16 = 1933 Cr. C. 127 = 1933 M. Cr. C. 12.

(*o*) Public Prosecutor, Madras V Parameswara Iyer. 60 L.W. 434 = 1947 M.W.N. 408 = A.I.R. 1947 Mad 428 = (1947) 2 M.L.J. 71.

(*p*) The Public Prosecutor V. Seshargiri Rao A.I.R. - 1949 Mad. 155 = 1948 M.W.N. 484 = 1948 - 2 M.L.J. 124 = 50 Cr. L.J. 198.

(*q*) Budh Sen V. Emperor A.I.R. 1934 All. 329 = 1934 Cr. C. 414 = 35 Cr. L.J. 681 = 148 I.C. 384.

(*r*) A. S. Arunachala Nadar V. State (1958) 2 M.L.J. 418 = (1958 M.L.J. (Cr.) 836.

Held no offence committed. (s)

2. Where ghee was neither stored nor offered for sale. Conviction not sustainable. (t)

3. Refractive index, held no guide to the purity of butter—Reichert Wollney & Saponification values, though abnormal for pure butter, held could not be said beyond reasonable doubt to be inconsistent with purity of butter. (u)

4. Butter offered for sale in sealed tins as purchased—extra moisture in it got admixed in process of manufacture. Conviction held not proper. (v)

5. Charge not specifying whether milk in question was cow's or buffalo's. Certificate of Analyst based on assumption that it was buffalo's. Sample found to contain 3.4% of milk fat—Offence held not established. (w)

6. Sweetmeat called Kajoor not in the list of articles of food in which standard of purity is prescribed. Offence under section 5(1) (d) of the Madras Prevention of Adulteration Act cannot be committed in respect of it. (x)

7. Supply of sample of butter to the Sanitary Inspector under Section 14 of the Madras Prevention of Adulteration Act is not a sale and when a Secretary and an Accountant of a Cooperative Society so supplies butter under section 14, they cannot be convicted under section 5(1) (d) and rules 24, 28, 29 framed under section 20(2) nor can they be said to offer the butter for sale. (y)

8. Person adulterating ghee must either sell it as defined in the Act or must advertise by label how far the quality of ghee falls short of the standard. If he without advertisement or catalogue sells food 64% fat and 30% ghee, he need not put a label to that effect because

(s) P. Srinivasa Rao, In re A.I.R. 1944 Mad. 477=(1944) 2 M.L.J. 119=1945 M.W.N. 553 (2)=17 R.M. 177=46 Cr. L.J. 67=215 I.C. 246.

(t) Pudu Kodu Iswara Subramayya Ayyar Vs. Emperror -A.I.R. 1940 Mad. 938=(1940) M.W.N. 804 (2)=R.M. 473=42 Cr. L.J. 31=190 I.C. 624

(u) P. Padmanabha Chelly Perumal & Co. in re. A.I.R. 1943 Mad. 47=55 L.W. 775=(1942) 2 M.L.J. 285=1942 M.W.N. 587=44 Cr. L.J. 190=I.L.R. (1943) Mad. 71=15 R.M. 758=204 I.C. 311.

(v) Dehi Bather Vs. Corporation of Madras—A.I.R. 1940 Mad. 221=51 L.W. 203=41 Cr. 552=(1939) M.W.N. 1224 (2)=1940 1 M.L.J. 169=13 R.M. 3=188 I.C. 150.

(w) Krishna Iyer, in re 49 L.W. 205=A.I.R. 1939 Mad. 384=(1939) 1 M.L.J. 266=(1939) M.W.N. 244=41 Cr. L.J. 106=12 R.M. 524=185 I.C. 3

(x) K. S. Ambi Iyer, in re. 49 L.W. 302=(1939) 1 M.L.J. 332=(1939) M.W.N. 239=11 R.M. 768=40 Cr. L.J. 513=A.I.R. 1939 Mad. 375=181 I.C. 51.

(y) Public Prosecutor Vs. Srinivasa Rao—A.I.R. 1938 Lah. 473=40 P.L.R. 23=11 R.L. 194=39 Cr. L. J. 718=176 I.C. 272 (2)

it is not ghee as defined in the Act. (z)

9. Where a sweet-meat vendor was found in possession of adulterated ghee, but was neither selling nor exposing for sale nor manufacturing nor storing for sale, the ghee samples of which had been taken by the Sanitary Inspector. Held, that mere possession of adulterated ghee is no offence (a)

10. Mere presence of some foreign matter in small quantity in an article of food when small matter may have been mixed up in the process of collection, preparation or conveyance is no offence (b)

11. Where the accused was convicted on the only piece of evidence that the Sanitary Inspector compelled him to sell the adulterated ghee which he did not want to sell. Held, that these facts did not constitute offer for sale. (c)

12. Where the accused who is charged with the offence of offering for sale ghee which was not of the prescribed standard of purity, pleads that he got it from outside and demands a trial. The accused cannot be convicted as the said defence does not amount to a plea of guilty on the part of the accused. (d)

13. The Act does not apply to the sale or exposure for sale or manufacture or storage for sale of articles which are not or are not represented to be articles of food. There is nothing illegal in the sale of articles containing mustard oil when there is no representation that the article sold is an article of food (e) (Here mustard oil was sold as fuel oil containing fuel oil in it.)

14. If a particular article of food is commonly assumed to contain a foreign mixture not injurious to health and the article offered or exhibited for sale by the accused is found to contain such mixture and no more, the implied warranty held out by him is not broken. Held that the accused is not guilty where there is nothing to show that the accused offered to sell or exhibited for sale wheat flour which contained barley flour to any but a negligible extent and it was due to a cause other than the inevitable one, namely the presence of barley in wheat crop when the latter was thrashed and there is nothing to indicate that the flour which the accused offered for sale was to the prejudice of the purchaser desirous of purchasing

(z) Akkan Chetty Vs. Emperor—(1931) M.W.N. 1045.

(a) Ramjatan Sahu V. Chairman, Municipality, Daltonganj A.I.R. 1955 N.U.C. Patna 2489

(b) Sarup Lal V. Emperor A.I.R. 1936 Pat. 636=1936 Cr. C. 1067=17 P.L.T. 953=166 I.C. 206.

(c) Gopalan V. Emperor 1936 M.W.N. 750.

(d) Sabba Sabbayya Chetty V. Emperor (1937) M.W.N. 215.

(e) Nishikanta Saha V. Emperor A.I.R. 1943 Cal. 468=47 C.W.N. 698=209 I.C. 229=45 Cr. L.J. 111.

wheat flour commonly accepted as such, the evidence falls short of the requirement of the offence. (f)

15. The mere possession of adulterated food is no offence(g).

16. Where milk is analysed by the Analyst a week after the samples were taken, no presumption of adulteration can be drawn in the absence of proof of the manner in which the samples were sent and the condition in which the milk was when the samples were received by him. (h)

17. Where under a contract for supply, goods are to be provided according to certain specifications, there is a likelihood that occasionally they may not be of that standard. The penalty the contractors pay for such a mistake is that they suffer a loss, but if they fail to produce the goods of a standard quality; this failure by itself does not constitute an offence. (i)

42. Definitions and standards of qualities of some of the common articles of food as given in appendix B of the rules for facility of reference are reproduced below :—A. 05. 01. Turmeric (Haladi) means the dried rhizome or bulbous root of plants of genus *Curcuma* and species *longa* and includes turmeric in whatsoever form. It shall be free from damage by insect pest, from lead chromate and other artificial colouring matter, and shall not contain more than 2.5 parts per million of lead. It shall conform to the following standard :—

- (a) Moisture shall not be more than 10 per cent.
- (b) The characteristic boric acid test shall be positive.
- (c) Total ash shall be not more than 7 per cent.
- (d) Ash insoluble in HCl shall not exceed 1.5 per cent.

A. 07. 03. Honey means the food derived entirely from the work of bees operating upon the nectar of flowers and other sweet exudation of plants. It shall be contained more than (a) 25 per cent of moisture (b) 0.5 per cent of ash, and (c) 10 per cent of sucrose. The minimum reducing sugar contents shall be 60 percent. Fiehe's test should be negative

(f) *Mithan Lal Vs. Emperor*—A.I.R. 1934 All. 439=6 A.R. 869=35 Cr. L.J. 913=149 I.C. 222.

(g) *Banarsi Das Vs. Emperor*—A.I.R. 1930 All. 595=1930 Cr. C. 817=1930 A.L.J. 911=31 Cr. L.J. 866=125 I.C. 503.

(h) *Dattapa Mahadatta V. Secretary Municipal Committee Buldana* A.I.R. 1951 Nag. 191=1952 Cr. L.J. 471.

(i) *Dharam Deo Gupta V. State* A.I.R. 1958 All. 865.

A. 07. 04. Ice-candy means the frozen ice produce containing sugar, with or without the addition of the permitted colouring or flavouring substances.

A. 11 01. Milk means the normal clean and fresh secretion obtained by complete milking of the udder of a healthy cow, buffalo, goat or sheep during the period following at least 72 hours after calving or until colostrum free whether such secretion has been processed or not.

A. 11. 01. 01. Cow milk shall contain not less than 3.5 per cent of milk fat, except in Orissa, where it shall be not less than 3 per cent and in Punjab and PEPSU where it shall be not less than 4.0 per cent. The milk solids other than milk fat, shall be not less than 8.5 per cent.

A. 11. 01. 02. Buffalo milk shall contain not less than 5.0 per cent of milk fat except in Delhi, Punjab. PEPSU, Uttar Pradesh, Behar, West Bengal, Assam, Bombay and Saurashtra where it shall be not less than 6 percent. The milk solids other than milk fat, shall be not less than 9 per cent.

A. 11, 01.03. Goat or sheep milk shall contain not less than 3.0 per cent of milk fat except in Madhya Pradesh, Punjab, PEPSU, Bombay, Uttar Pradesh and Travancore-Cochin where it shall not be less than 3.5 per cent. The milk solids other than milk fat shall be not less than 9 per cent.

Where milk, other than skimmed milk, is sold or offered for sale without any indication as to whether it is derived from cow, buffalo, goat, or sheep; the standard prescribed for buffalo milk shall apply.

A. 11. 02. Skimmed milk, either fresh or reconstituted, means milk from which all or most of the milk fat has been removed by mechanical or any other process and includes, "separated milk" or "machine skimmed milk". The milk solids other than milk fat shall be not less than 8.5 per cent.

A. 11. 03. Butter-milk means the product obtained after removal of butter from curds by churning or otherwise.

A. 11.04. Toned Milk shall be prepared by toning milk with fresh separated milk or with separated milk constituted from spray dried skimmed milk powder.

It shall contain not less than 3.0 per cent of milk fat and 8.5 per cent of milk solids other than milk fat.

A. 11.05. Butter means the product prepared exclusively from the milk or cream of cow or buffalo, or both, with or without

the addition of salt and annatto and shall contain not less than 80 per cent of milk fat and not more than 16 per cent of moisture. No preservative is permissible in butter.

A, 11.06. Dahi or curd (a) Whole milk dahi or curd means the product obtained from fresh whole milk either of cow or buffalo by souring. It shall not contain any ingredient not found in milk.

(b) Skimmed milk dahi or curd means the product obtained from skimmed milk either of cow or buffalo by souring. It shall not contain any ingredient not found in milk.

The standard of purity of dahi or curd shall be the same as prescribed for the milk from which it is derived.

A 11.14. Ghee means the pure clarified fat derived solely from milk or from curds or from cream to which no colouring matter or preservative has been added. It shall conform to the following specifications in Punjab, Uttar Pradesh, Bhopal, Vindhya Pradesh, Bihar, West Bengal (except Bishanupur) and PEPSU (except Mahendragarh).

(a) Butyro refractometer reading at 40°C. 40.4 to 43.0.

(b) Reichert Value — ... Not less than 28.0.

(c) Free fatty acids as oleic acid Not more than 3.0 per cent

(d) Moisture Not more than 0.3 per cent.

In Madras, Andhra, Travancore-Cochin, Hyderabad, Mysore, Orissa, Assam, Tripura, Manipur, Madhya Bharat, Bombay, Himachal Pradesh, Mahendragarh District Pepsu, Madhya Pradesh (except cotton tract areas) and Rajasthan (except Jodhpur) the specification will be the same as above except that Reichert value shall be not less than 26.0.

In Saurashtra, Kutch, cotton tract areas of Madhya Pradesh, Jodhpur Division of Rajasthan and Bishnupur sub-division of West Bengal the Reichert value shall be not less than 21 and the Butyro-refractometer reading at 40°C shall be between 41.5 to 45.0. The limits for free fatty acids and moisture shall be the same as for ghee in Punjab, Pepsu etc. given above.

Explanation — By cotton tract is meant the areas in Madhya Pradesh where cotton seed is extensively fed to the cattle.

Statutory changes : A. 11.14 definition and standard of quality of ghee has been added by Notification No. S.R.O. 1687, dated July 14, 1956.

A. 17.06 Mustard oil (Sarson-ka-tel) means the oil expressed from clean and sound mustard seeds, belonging to the *compestris*,

juncea or napus varieties of Brassica. It shall be clear, free from rancidity, suspended, or foreign matter, separated water, added colouring or flavouring substances or mineral oil. It shall conform to the following standards :

(a) Butyro-refractometer reading at 40°C	58.0 to 60.5
(b) Saponification value	168 to 176.
(c) Iodine value	96 to 108.
(d) Unasaponifiable matter	Not more than 1.2%.
(e) Free fatty acid as Oleic acid	Not more than 3.0%.

The test for argemone oil should be negative,

A. 18.01. Atta means the coarse product obtained by milling or grinding wheat and sieving it. It shall contain not more than 2.5 per cent of ash and not less than 7 per cent of gluten both calculated on dry weight basis. It shall be free from grit and the alcoholic acidity (with 90 per cent alcohol) shall not exceed 0.1 per cent expressed as sulphuric acid (H_2SO_4).

A. 18.02. Maida means the fine produce made by milling or grinding wheat and bolting or dressing the resulting wheat meal. It shall contain not more than 1 per cent of ash and not less than 8.0 per cent of gluten both calculated on dry weight basis. The alcoholic acidity (with 90 per cent alcohol) shall not exceed 0.1 per cent, expressed as sulphuric acid (H_2SO_4).

A. 18.03. Semolina (Suji) is the food prepared from wheat by the process of grinding and bolting to such a degree of fineness that it passes through a No. 20 sieve and not more than 3 per cent passes through a No. 100 sieve. It shall be free from grit and insect infestation, musty smell and off-odour and should be creamy yellow in colour.

It shall contain :

- (a) not more than 1 per cent of total ash.
- (b) not more than 13.5 per cent of moisture.
- (c) not less than 6.0 per cent of gluten.

A. 19. Vegetable Oil product or Vanaspati means any refined edible oil or oils, subjected to a process of hydrogenation in any form. It shall be prepared by hydrogenation from groundnut oil, cotton seed oil and sesame oil or mixtures thereof or any other harmless vegetable oils allowed by the Government for the purpose. It shall conform to the standards specified below—

- (i) It shall not contain any harmful colouring, flavouring or any other matter deleterious to health.

- (ii) No colour shall be added to hydrogenated vegetable oil unless so authorised by Government, but in no event any colour resembling the colour of ghee shall be added.
- (iii) If any flavour is used, it shall be distinct from that of ghee, in accordance with a list of permissible flavours and in such quantities as may be prescribed by Government.
- (iv) It shall not have moisture exceeding 0.25 per cent.
- (v) The melting point as determined by the capillary slip method shall be from 33° C to 37° C, both inclusive.
- (vi) The Butyro-refractometer reading at 40° C shall not be less than 48.
- (vii) It shall not have unsaponifiable matter exceeding 1.25 per cent.
- (viii) It shall not have free fatty acids (calculated as Oleic acid) exceeding 0.25 per cent
- (ix) The product on melting shall be clear in appearance and shall be free from staleness or rancidity, and pleasant to taste and smell.
- (x) It shall contain raw or refined sesame (till) oil not less than 5 per cent by weight, but sufficient so that when the Vegetable Oil Product is mixed with refined groundnut oil in the proportion 20 : 80, the red colour produced by the Baudouin test shall not be lighter than 2.0 Red units in a 1 cm. cell on a lovibond scale.
- (xi) It shall contain not less than 700 I.U. of synthetic Vitamin 'A' per ounce.

43. Mens Rea : Mens Rea is not a necessary ingredient of the offence under the Prevention of Food Adulteration Act Section 19 of the Act clearly lays down that it shall be no defence in prosecution for an offence pertaining to the sale of any adulterated or mis-branded article of food to allege merely that the vendor was ignorant of the nature, substance or quality of the food sold by him or that the purchaser having purchased any article for analysis was not prejudiced by the sale. This provision is an exception to the general law pertaining to criminal liability in which Mens Rea plays a very important part. The act only so far as the vendor is concerned makes only one exception as given in section 19 (2) of the Act which is reproduced below :

19(2) -- A vendor shall not be deemed to have committed an offence if he proves—

- (1) that the article of food was purchased by him as the same in nature, substance and quality as that deman-

ded by the purchaser and with a written warranty in the prescribed form, if any, to the effect that it was of such nature, substance and quality.

(ii) that he had no reason to believe at the time when he sold it that the food was not of such nature, substance and quality ; and

(iii) that he sold it in the same state as he purchased it.

Provided that such a defence shall be open to the vendor only if he has submitted to the food inspector or the local authority a copy of the warranty with a written notice stating that he intends to rely on it and specifying the name and address of the person from whom he received it, and has also sent a like notice of his intention to that person :

Provided further that the warranty given by a person resident in any area in which this Act is not in force, shall be a defence to the vendor only if the vendor proves to the satisfaction of the court that he had taken reasonable steps to ascertain and did in fact believe in the accuracy of the statement contained in the warranty.

Under proviso to section 17 of the Act where the offence is committed by a company every person who at the time the offence was committed was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly, provided that nothing in this subsection shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

44. Section 16(1) (b)(c) : Under section 10 Food Inspectors are authorised to take samples for analysis following the procedure as laid down in section 11 and to exercise other powers as given in section 10. Under section 16 (1) (b) and (c) if any person prevents a Food Inspector from taking sample as authorised by this Act or from exercising any other power conferred upon him by or under this Act he commits an offence under section 16 (1)(b) or (c) as the case may be. It may be noted that if the Food Inspector exercises any powers given to him under the rules and not under the Act the person preventing him from exercising those powers will not be guilty of any offence. Section 16 (1) (a) punishes any person if he commits any act mentioned therein if it is in contravention even of any rule made under the Act, while it is not so under clauses (b) and (c) of section 16 (1) of this Act.

45. **Prevention and what it constitutes :** 1. Refusal to give sample even on payment is not the same thing as prevention which need not have an element of physical obstruction but involves some act which hinders an inspector from taking a sample. Hence mere refusal to give sample even on payment is no offence under section 16 (1) (b) as it is not the same thing as prevention. (j)

2. To prevent does not mean only an obstruction by physical force but it may involve a threat. (k)

3. Where the accused passing by the road with a bucket of milk in his hand was asked by the Food Inspector to stop but the accused instead of complying with the request took to his heels and when chased by the peon threw away the milk from which the Food Inspector intended to take a sample, the accused will be deemed completely to have obstructed the performance of the duties by the officer. It is not necessary that there should have been resistance in the sense of some force having been used by the accused. All that the section penalises is wilful obstruction of any person acting in the performance of duty under the Act. It does not say that the obstruction need necessarily have been by use of force. The use of word obstruction does not necessarily carry any idea of force. It could not in the circumstances, be said that because the inspector was unable to inform the applicant of his purpose, the inspector could not be said to have been performing the duty under the Act. But the accused could not be convicted for obstructing the inspector in performing the duty enjoined upon him unless and until it was established by the prosecution that the article of food, (in this case milk) out of which the inspector wanted to take the sample was "Food offered or exposed for sale". The conduct of the applicant in throwing the milk did not necessarily show his guilty mind in that the milk he was throwing was to be offered or exposed for sale and was adulterated. It could not be said that such conduct was consistent only with the guilt of the accused for the offence. The prosecution should show that the milk in question was going to be offered or exposed for sale as required by R. 4(b). Since there was nothing to show that the milk in question from which the Inspector wanted to take a sample was milk which was, or was even meant to be offered or exposed for sale the obstruction in question could not be said to be obstruction to the Inspector in the performance of his duty, and the applicant could not therefore be said to be guilty of the offence punishable under section 30 of the U. P. Pure Food Act (l).

(j) Bishen Dass Telu Ram V. State A.I.R. 1957 Punjab 99.

(k) In Cort Vs. Amargate etc. Railway Co. (1851) 20 L.J. Q.B. 460 at page 465.

Note.—This ruling has been distinguished in A.I.R. 1957 Punjab 99.

(l) Nazim Vs. State A.I.R. 1957 All. 829=(1957) Cr. L.J. 1384.

It is not necessary that an overt Act in the nature of physical clash and an effective disabling of the Executive Officer from taking a sample should be present before the offence is made out. Where the maistry under the Sanitary Inspector and the Malaria cooly of a Panchayat Board were deputed by the Sanitary Inspector to take samples of milk from persons who were carrying milk for sale, for analysis to detect adulteration and the accused was carrying milk to a hotel was asked to give a sample but the accused instead of giving a sample went into the hotel where the milk was handed over to a servant who poured into a milk pan containing other boiled milk, the offence of preventing the officer from taking a sample under the Act is made out. No overt act is necessary to make out preventing the officer from taking the sample (*m*).

It is only if there is ghee or butter which is intended for sale and of which the sample is asked for by the Sanitary Inspector and if that is prevented from being taken, then, an offence under section 16 (1) (b) is committed. Where the Sanitary Inspector went over to a shop for purchasing the sample because he did not find even an oven there, he as a matter of information asked as to where the oven was. The accused then took him to his house and there the Sanitary Inspector found two viss of ghee in one of the open tins when the other two tins were empty. There was no proof that these two viss of ghee which were kept in the house were intended for sale. It was held that the offence was not established as the ghee in the house was not proved to be for sale (*n*).

46. Sanitary Inspector not authorised by lawful authority to inspect food Resistance to such inspection, whether offence under the Act: A person resisting a Sanitary Inspector who has been authorised by the Chairman of the Municipality to perform the duties under Sections 10 & 12 of the Bengal Food Adulteration Act 1919 (which authorisation is beyond the power of the Chairman) in his attempt to inspect and examine food, cannot be convicted under section 21 of the Bengal Act (*o*).

Position where lawful authority wanted :—Where a person resisted a peon in attaching property under a warrant, the term of which had already expired ; (*p*) where the warrant directing the attachment of property was not signed by the Judge or such officer as

(m) Public Prosecutor Vs. Murugesan - 1952 M.W.N. 145 (1)=(1952) 1 M.L.J. 168=A.I.R. 1954 Mad. 199.

(n) Public Prosecutor Vs. Sami Venkataraman - A.I.R. 1958 Mad. 382=71 M.L.J. 236=71 Mad. L.W. 248.

(o) Satesh Chandra Vs. Nihal Chand - A.I.R. 1932 Cal. 462=36 C.W.N. 134=59 Cal 234=I.R. (1932) Cal. 334=33 Cr. L.J. 521=(1932) Cr. C. 452=137 I.C. 812

(p) Anand Lall Bera, (1833) 10 Cal 18; Rama Goudan, (1891) 1 Weir 134.

the court might appoint ; (q) where a Sherriif was resisted in attaching property under a defective warrant issued by a civil Court, (r) where a village watchman without the requisite written authority attached some property for levying the amount of arrears and resistance was offered to such attachment ; (s) where a bailiff distrained some sheep and goats, not belonging to the judgement-debtor but belonging to the person who resisted the dstraint and who had a bonafide claim of right ; (t) it was held that the person resisting was not guilty of an offence under this section.

Where a Court peon removed movable property without giving any option to the judgment debtor to provide safe custody for the property as required by High Court Circular Orders, it was held that the subsequent taking back of the said property by the judgment-debtor did not constitute an offence under this section (u). If a bailiff breaks the doors of a third person, in order to execute a decree against a judgment debtor, he is a trespasser if it turns out that the person or goods of the debtor are not in the house ; and, under such circumstances, the owner of the house does not, by obstructing the bailiff, render himself punishable under the section or section 186 I P C. (v). A cultivator of land was in arrears with his irrigation dues, which became recoverable as arrears of land revenue. He had grown sugarcane on the land which he sold to a trader. The accused was employed by the trader to crush the sugarcane and prepare jaggery. To recover the irrigation dues, the Talati of the place, acting under the orders of the Mamlatdar attached the jaggery while it was being conveyed from the fields to a village. The accused delivered the jaggery to a shopkeeper on the way instead of taking it into the Mamlatdar's office, and for this act he was convicted of an offence under this section. It was held that the accused was not guilty of an offence under this section as the order of attachment was not valid and the property attached having been sold by the occupant it was no longer his property, and the accused was entitled to resist peacefully the wrongful act of the Talati in seizing the jaggery (w).

(q) Karamatullah, (1920) 18 A.L.J. R. 284 21 Cr. L.J. 742, (1920) A.I.R. (A) 521.

(r) Prabh Dayal, (1905) P.R. No. 40 of 1905=6 P.L.R. 655=3 Cr. L.J. 131. It was also held that he was not guilty under S. 186.

(s) Durga Charan Mall V. Nobin Chandra Sil, (1897) 25 Cal. 274=Yeshwant, (1887) Unrep, Cr. C. 325=Cr. No. 13 of 1887.

(t) Nachiappa Goudan, (1932) M.W.N. 247.

(u) Ahmed Sheikh, (1928) 56 Cal. 460.

(v) Gozi Aba Dore, (1370) 7 B.H.C. (Cr. C.) 83 John Anderson V. J. Mc Queen, (1867) 7 W.R (Cr.) 12.

(w) Sakharma Pawar, (1935) 37 Bom. L.R. 362=58 Bomb. 545.

• 47. Section 16 (1) (d) : Under this sub-clause the prosecution has to prove ;

1. That the accused is a manufacturer of a certain article of food.
2. That he has in his possession, or in any of the premises in his occupation, any material which he can employ for the purpose of adulteration of the said article.

48. Possession—What it means :—Apparently the word possession in section 16 (1) (d) can only mean actual physical possession and not merely constructive.

There was a similar question in a case under the Bengal Food Adulteration Act 1919 in which the accused was charged with being in possession of an adulterated article of food meant for sale. The question was whether possession meant actual physical possession only or included also constructive possession. It was held that the word possession must be given a strict interpretation and cannot be extended to include constructive possession (x).

The same view was taken also in a subsequent case of the same High Court (y).

Where the accused took delivery of a consignment of tins of mustard oil at the railway station for the purpose of selling it. On the same day while the goods were actually on the railway premises the sample was taken from two tins by the Sanitary Inspector and the mustard oil was found to be adulterated. The accused was subsequently prosecuted and it was held that although the goods had not actually left Railway Station, they were nevertheless being stored for sale by the accused. The accused came into physical possession of the consignment as soon as he took delivery thereof at the Railway Station and from the moment that he took such delivery until the goods were actually exposed for sale in his shop, there could be no doubt that he was actually storing them with a view to their ultimate disposal by sale and consequently the requisite initial onus must be taken to have been discharged by the prosecution. The fact that the accused could have no opportunity to examine the nature of the goods between the time that he took delivery and the time when the sample was taken is no defence (z)

(x) Ram Charita Vs. District Board, Rajshahi—A.I.R. 1937 Cal 710=41 C.W.N. 1213=172 I.C. 869=I.L.R. (1938) 1 Cal. 420 (Webb Vs. Baker 1916 2 K.B. 753 rel. on).

(y) Sachi Nandan Piri Vs. Chairman Midnapore District Board—A.I.R. 1940 Cal. 213=44 C.W.N. 173=I.L.R. 1940—1 Cal. 333=188 I.C. 398=41 Cr. L.J. 582.

(z) Hari Rakshak Dutt Vs. Chairman District Board, Birbhum A.I.R. 1941 Cal. 150=44 C.W.N. 1139=72 C.L.J. 531=194 I.C. 136=42 Cr. L.J. 522.

49. Section 16 (1) (e) : Under section 10 (4) of the Act the Food Inspector in case an article intended for sale appears to him to be adulterated or misbranded, is authorised to seize and carry or to keep in the safe custody of the vendor, such article in order that it may be dealt with as provided in Section 11 (4) which is reproduced below :—

An article of food seized under sub-section (4) of section 10 shall be produced before a magistrate as soon as possible.

Provided that in the case of any article of which samples have been sent to the Public Analyst for analysis it may be produced on or after the receipt of the report of the Public Analyst :

Provided further that if an application is made to the magistrate in this behalf by the person from whom any article of food has been seized, the magistrate shall by order in writing direct the Food Inspector to produce such article before him within such time as may be specified in the order.

Under section 16 (1) (e) if a person in whose safe custody any article of food has been kept under sub-section 4 of section 10, tampers with or in any other manner interferes with such article he is guilty of the offence under section 16 (1) (e).

50. Section 16 (1) (f) : The object of this sub-clause is to prohibit the use of any report or certificate of test or analysis made by the Director of the Central Food Laboratory or by a Public Analyst or any extract therefrom for the purpose of advertisement of any article of food. This sub-section does not prohibit if any person makes use of any certificate of analysis of an article of food of any other authority for the purpose of advertisement.

51. Rule concerning advertisement of an article of food : The Central Government has framed rule No. 43 concerning advertisement of articles of food which is reproduced below :

43. Notice of addition, admixture or deficiency in food—
 (1) Every advertisement and every price or trade list or label for an article of food which contains an addition, admixture or deficiency shall describe the food as containing such addition, admixture or deficiency and shall also specify the nature and quantity of such addition, admixture or deficiency. No such advertisement or price or trade list or label attached to the container of the food shall contain any words which might imply that the food is pure.

(2) Every package, containing a food which is not pure by reason of any addition, admixture or deficiency shall be labelled with an adhesive label which shall have the following declaration—

DECLARATION

This (a).....contains an admixture/addition of not more than (b)per cent of/international units of (c).....per ounce.

(a) Here insert the name of food.

(b) Here insert the quantity of admixture which may be present.

(c) Here insert the name of the admixture or the name of the ingredient which is deficient.

Where the context demands it, the words 'contains an admixture of, shall be replaced by the words 'contains an addition of or is deficient in'.

(3) Unless the vendor of a food containing an addition, admixture or deficiency, has reason to believe that the purchaser is able to read and understand the declaratory label, he shall give the purchaser, if asked, the information contained in the declaratory label by word of mouth at the time of sale.

(4) Nothing contained in this rule shall be deemed to authorise any person to sell any article of food required under the Act or these rules to be sold in pure condition, otherwise than in its pure condition.

(5) Nothing contained in this rule shall apply in the case of sweets, confectionary, biscuits, bakery products, processed fruits, aerated water and vegetable.

Note ; The form of declaration in sub-rule (2) has been substituted for the existing form and sub-rule (5) has been added after sub-rule (4) by S. R. O 2755 dated 20th November 1956.

52 Section 16 (1) (g) : Under this sub-clause it is an offence for any person to give a false warranty in writing in respect of any article of food sold by him whether the said false warranty is given by him or by any other person on his behalf.

53. Warranty—What it is : The word is not defined in the Prevention of Food Adulteration Act but it has been defined in section 12 (3) of the Indian Sale of Goods Act (IX of 1930) as follows :

"A warranty is a stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated."

Warranty under the Prevention of Food adulteration Act can only be as to the nature, substance or quality of the article sold or as to its brand.

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Rule 12 (a) makes a provision under which every vendor is bound to give warranty if so required by the purchaser. Rule 12 (a) is reproduced below :

12 (a) Warranty : Every trader selling an article of food to a vendor shall if the vendor so requires, deliver to the vendor, a warranty in Form VI A ;

Provided that no warranty in such form shall be necessary if the label on the article of food or the cash memo delivered by the trader to the vendor in respect of that article contains a warranty certifying that the food contained in the package or container or mentioned in cash memo, is the same in nature, substance and quality as demanded by the vendor.

Explanation :—The term 'trader' shall mean an importer, manufacturer, wholesale dealer or an authorised agent of such importer, manufacturer or whole sale dealer.

Note :—This rule has been inserted by Notification No. S.R.O 2755, dated 20th November, 1956.

54. False Warranty : Before a person can be held guilty of the offence under section 16(1) (g) there must be definite evidence that the alleged warranty given in writing is false to the knowledge of the accused, or there must be circumstantial evidence to prove the same.

55. Sale of article under warrant of purity. Article found mixed with light impurity—Whether an offence ? The difference between a sale falling under part (1) and a sale falling under part (ii) of section 4 of the U. P. Prevention of Adulteration Act, 1912 (VI of 1912) is that whereas in the first part it is the purchaser who demands an article of food or any drug of a certain nature, substance or quality and the seller does not expressly say anything about the nature, substance or quality. In the second part it is the seller who says what the nature or quality of the article is. In the first part of the section prejudice to the purchaser has to be proved in addition to the fact that the article is not of the nature, substance or quality demanded by the purchaser. In the second part prejudice to the purchaser has not to be proved. It is enough that the seller declares an article to be of certain nature, substance or quality. In the first part the seller does not give any express warranty. In the second part the seller gives an express warranty. Where, therefore, the seller gives an express warranty that the article is cent percent pure then even though the impurity is negligible, he commits an offence under part second, but he commits no offence if he does not give an express warranty and the case falls within the first part of section 4, provided he can prove that the small impurity in the article supplied

is due to its being unavoidably intermixed in the process of production or conveyance of the article (a)

56. Article of food assumed commonly to contain foreign admixture not injurious to health—Offer for sale of such article found to contain only such mixture—Implied warranty by seller not broken :— If a particular article of food is commonly assumed to contain foreign mixture not injurious to health and the article offered or exhibited for sale is found to contain such mixture and no more, the implied warranty held out by him is not broken. Held that the accused is not guilty where there is nothing to show that the accused offered to sell or exhibited for sale wheat flour which contained barley flour to any but a negligible extent and it was due to a cause other than the inevitable one, namely the presence of barley in wheat crop when the latter was thrashed and there is nothing to indicate that the flour which the accused offered for sale was to the prejudice of the purchaser desirous of purchasing wheat flour commonly accepted as such, the evidence falls short of the requirement of the offence (b)

57. Warranties in matters of civil liabilities may be express or implied :— Warranty may be express or implied.

It is express if entered into a contract, and implied if attaching to a contract by operation of law or usage of trade. Warranty under the provisions of the Sale of Goods Act, 1930 are the following, unless the circumstances of the contract are such as to show different intention.

1. An implied warranty that the buyer shall have and enjoy quiet possession of the goods (Sec. 14),

2. An implied warranty that the goods are free from any charge or encumbrance in favour of any third party, not declared or known to the buyer before or at the time when the contract is made (Sec. 14).

Implied conditions and warranties are enforced on the grounds that the law infers from all the circumstances of the case that parties intended to add such a stipulation to their contract but did not put into express words (c).

(a) *Emperor Vs. Puran Mal*—A.I.R. 1948 All. 403=1948 A.W.R. (H.C.) 159=49 Cr. L.J. 686.

(b) *Mithan Lal V. Emperor* A.I.R. 1934 All. 439=6 R.A. 869=35 Cr. L.J. 913=149 I.C. 222.

(c) See the *Moorcock*, (1869) P. D. 64 at Page 68, Bowen L.J. See also *Luxor (Eastbourne) Ltd. V. Cooper* (1941) A.C. 106, 137, per Lord Wright; (1941) 1 All. E.R. 33. H.L.—The Explanation "implied term" denotes sometimes terms which does not depend on the actual intention of the Parties but on a rule of law.

58 Effect of breach of warranty—Civil remedies :—The buyer may not on account breach of warranty repudiate the contract, but he may :

1. Set up the breach of warranty in diminution or extinction of the price (Sec 59), and
2. He may bring an action against the seller, and claim damages for the breach (Sec 59).

59 Invoice is no warranty under the Act :—An invoice is merely a description of the article sold and cannot be said to be a warranty given within the meaning of section 16 (1) (g) (d).

60. Defences open or not open to the accused :—See commentary under Section 19.

61. Penalties for offences under section 16 :—(a) Penalty under section 6 (See commentary under section 6) ; and

(b) (i) For the first offence imprisonment which may extend upto one year, or fine upto two thousand rupees or both

(ii) For second offence with imprisonment which may extend to two years and with fine. Such imprisonment not to be less than one year and such fine not to be less than two thousand rupees unless there be special and adequate reasons to the contrary to be mentioned in the judgment.

(iii) For a third and subsequent offence imprisonment for a term which may extend to four years and fine. Such imprisonment shall not be less than two years and fine not to be less than three thousand rupees unless there be special and adequate reasons to the contrary to be mentioned in the judgment.

(c) In case a person having been once convicted of any offence under this Act commits a like offence it shall be lawful for the court before which the second or subsequent conviction takes place to cause the offender's name and place of residence, the offence and the penalty imposed to be published at the offender's expense in such newspaper or in such other manner as the court may direct. The expenses of such publication shall be deemed to be part of the costs attending the conviction and shall be recoverable in the same manner as a fine.

62. Powers of the Court under the Probation of Offenders Act, 1958 20 of 1958) concerning penalties :—The Act received the assent of the President on 16th May, 1958. It extends to the whole of India except the State of Jammu and Kashmir. It shall come into

(d) State V. Balmokand 1953 All. L.J. 499-1953 All. W.R. (H.C.) 583 =1954 Cr. L.J. 165- A.I.R. 1954 All. 97=I L.R. (1954) 2 All. 272 (D. B.)

force in a State on such date as the State Government may, by notification in the Official Gazette appoint, and different dates may be appointed for different parts of the State. By this Act the Courts are empowered to release an offender after admonition in respect of certain specified offences. The Courts are also empowered to release on probation, in all suitable cases, an offender found guilty of having committed an offence not punishable with death or imprisonment for life. In respect of offenders under 21 years of age special provision has been made putting restriction on their imprisonment. The relevant sections 3, 4, 6, 18 and 19 of the Act are reproduced below for facility of reference.

3. Power of Court to release certain offenders after admonition—When any person is found guilty of having committed an offence punishable under sections 3, 9 or section 380 or section 381 or section 404 or section 420 of the Indian Penal Code (45 of 1860), or any offence punishable with imprisonment for not more than two years, or with fine, or with both, under the Indian Penal Code or any other law, and no previous conviction is proved against him and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient so to do, then, notwithstanding any thing contained in any other law for the time being in force, the court may, instead of sentencing him to any punishment or releasing him on probation of good conduct under section 4, release him after due admonition.

Explanation—For the purpose of this section, previous conviction against a person shall include any previous order made against him under this section or section 4.

4. Power of court to release certain offenders on probation of good conduct—(1) When any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct, then, notwithstanding any thing contained in any other law for the time being in force, the court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period, not exceeding three years, as the court may direct, and in the meantime to keep the peace and be of good behaviour :

Provided that the court shall not direct such release of an offender unless it is established that the offender or his surety, if any, has a fixed place of abode or regular occupation in the place

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over which the court exercises jurisdiction or in which the offender is likely to live during the period for which he enters into the bond.

(2) Before making any order under sub-section (1), the court shall take into consideration the report, if any, of the probation officer concerned in relation to the case.

(3) When an order under sub-section (1) is made, the court may, if it is of opinion that in the interests of the offender and of the public it is expedient so to do, in addition pass a supervision order directing that the offender shall remain under the supervision of a probation officer named in the order during such period, not being less than one year, as may be specified therein, and may in such supervision order impose such conditions as it deems necessary for the due supervision of the offender.

(4) The court making a supervision order under sub-section (3) shall require the offender, before he is released, to enter into a bond, with or without sureties, to observe the conditions specified in such order and such additional conditions with respect to residence, abstention from intoxicants or any other matter as the Court may, having regard to the particular circumstances consider fit to impose for preventing a repetition of the same offence or a commission of other offences by the offender.

(5) The court making a supervision order under sub-section (3) shall explain to the offender the terms and conditions of the order and shall forthwith furnish one copy of the supervision order to each of the offenders, the sureties, if any, and the probation officer concerned.

6. Restrictions on imprisonment of offenders under twenty one years of age—(1) When any person under twenty one years of age is found guilty of having committed an offence punishable with imprisonment (but not with imprisonment for life), the court by which the person is found guilty shall not sentence him to imprisonment unless it is satisfied that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it would not be desirable to deal with him under section 3 or section 4, and if the court passes any sentence of imprisonment on the offender, it shall record its reasons for doing so.

(2) For the purpose of satisfying itself whether it would not be desirable to deal under section 3 or 4 with an offender referred to in sub-section (1), the court shall call for a report from the probation officer and consider the report, if any, and any other information available to it relating to the character and physical and Mental condition of the offender.

18. Saving of operation of certain enactments:—Nothing in this Act shall affect the provisions of section 31 of the Reformatory Schools Act, 1897 (8 of 1897), or sub-section (2) of section 5 of the Prevention of Corruption Act, 1947 (2 of 1947) or the Suppression of Immoral Traffic in Women and Girls Act, 1956 (104 of 1956), or of any law in force in any State relating to juvenile offenders or Borstal Schools.

19. Section 592 of the Code not to apply in certain areas subject to the provisions of section 18, section 562 of the Code shall cease to apply to the States or parts thereof in which this Act is brought into force.

63. The Bill No. 12 of 1958 providing for further penalties for offences under the Act :—The said bill is reproduced below for the sake of reference:—

Bill No. 12 of 1958.

A Bill further to amend the Prevention of Food Adulteration Act, 1954.

Be it be enacted by Parliament in the Ninth Year of the Republic of India as follows :—

1. Short title extent and commencement. (1) This Act may be called the Prevention of Food Adulteration (Amendment) Act, 1958.

(2) It extends to the whole of India.

(3) It shall come into force at once.

2. Amendment of Sec. 20 of the Prevention of Food Adulteration Act, 1954 (37 of 1954) (hereinafter referred to as the Principal Act), after sub-section (2), the following sub-section shall be inserted, namely,—

“(3). Notwithstanding anything contained in this Act, or in any other law for the time being in force, an offence under this Act shall be triable summarily according to the procedure prescribed for summary trials under the Code of Criminal Procedure, 1898, (5 of 1898.)”

3. Insertion of new Sec. 21-A. After Section 21 of the Principal Act, the following section shall be inserted, namely,—

“21-A. Public flogging in certain cases. It shall be lawful for the trying court to inflict the punishment of public flogging if the offence is held to be deliberate or a persistent one.”

5. Powers of Magistrate in reducing penalties :—Where the Magistrate gives special and adequate reasons in the judgment

for reducing the period of imprisonment and the amount of fine he can reduce even the minimum penalties fixed under the Act.

65. Benefit of doubt :—Prosecution evidence weak and biassed and there was a possibility of accused's innocence—Accused should be acquitted. (a)

No conviction on mere surmise or suspicion. (b)

Where the case against the accused was not free from doubt even though there may be strong suspicion against him. Held that in such circumstances the accused is entitled to the benefit of the doubt. (c)

While it is true that the benefit of every doubt even in the matter of interpretation of statutes must be given to the accused, a construction which would defeat the very object of the law must be avoided if it is reasonably possible to do so. (d)

Where the prosecution evidence is insufficient the judge must acquit the accused. (e)

Where there is any doubt, the accused person must receive the benefit of that doubt. (f)

In a criminal case the benefit of reasonable doubt goes to the accused. (g)

Where it is a case of very great suspicion against the accused and there are number of facts which lead one to suspect that the real truth has not been placed before the Court either by the accused or by some of the prosecution witnesses and there is nothing in the evidence which is inconsistent with possibility of the story of the accused being wholly or to large extent true, in such a position it is not just to convict the accused. (h)

(a) Ramjas Vs. Emperor—27 P.W.R. 1916 (Cr.)=17 Cr. L.J. 303=66 P.L.R. 1916=35 I.C. 175.

(b) Nagu Lal Bhagga Vs. State—A.I.R. 1955 N.U.C. 1205 (Madh. B)

(c) Ram Parasad Vs. The State—A.I.R. 1955 N.U.C. 1192 (Raj.)

(d) Chunnoo Vs. State—A.I.R. 1954 All. 795=1954 Cr. L.J. 1762.

(e) In Re S. Pichai Pillai A.I.R. 1946 Mad. 389=1946-1 M.L.J. 331=59 M.L.W. 240=1946 M.W.N. 276.

(f) Gurcharan Vs. King Emperor—A.I.R. 1927 Oudh 611=1 L.C. 190=8 A.I. Cr. R. 379=28 Cr. L.J. 688=103 I.C. 416.

(g) State of Vindhya Pradesh Vs. Sarua Munni Dhimar—A.I.R. 1954 Vindhya Pradesh 42=1954 Cr. L.J. 1819.

(h) Superintendent and Remembrancer of Legal Affairs Bengal Vs. Tarak Nath Chatterjee—A.I.R. 1935 Cal. 304=62 Cal. 666=1935 Cr. Cases 491.

The benefit of doubt is not to be given only in case where the theory of the defence is accepted to be true but on the assumption that the story of the defence might be perfectly true. Where the prosecution failed to prove its case or where the prosecution is not certain as to what happened at the actual scene of occurrence, the accused need not examine any witness in support of his statement. Unless and until the prosecution has established a *prima facie* case against the accused, no adverse inference can be drawn against him from the non production of evidence by him. (i)

Where there is a material discrepancy in the prosecution evidence the benefit of doubt should be given to the accused. (j)

If the prosecution evidence is unsatisfactory, though defence is weak yet the accused should be given the benefit of doubt. (k)

Once the court has any doubt about the truth of the prosecution version then the accused is entitled to the benefit of the doubt. (l)

Two sets of witnesses equally credible or incredible divergent statements—benefit of the doubt to the accused should be given. (m)

Inference equivocal—accused's explanation possible—prosecution fails. (n)

Where the facts undoubtedly cast the utmost suspicion on the accused ; but lacked that element of certainty so essential to a conviction in a criminal case, the accused should be acquitted. (o)

66. Circumstantial evidence:—The principles to be followed in criminal cases based upon circumstantial evidence have by a long trend of judicial decisions been held to be as follows: (1) The circumstances from which an inference adverse to the accused is sought to be drawn must be proved beyond all reasonable doubt and must be conclusively connected with the facts sought to be

(i) *Mt. Motia Vs. The Government*—1 Raj. L.W. 89=A.I.R. 1951 Raj. 123=52 Cr. L.J. 981.

(j) *Teli Kaja Hussain Sahib Vs. Emperor*--12 I.C. 217=(1941) 2 M.W.N 14.

(k) *Ujja Vs. Emperor*—A.I.R. 1933 Oudh 457=10 O.W.N. 976=1933 Cr. C. 1316=127 I.C. 111.

(l) *Rambriekh Singh Vs. Emperor*—6 B.R. 110=A.I.R. 1940 Patna 365=41 Cr. L.J. 114=12 R.P. 339=185 I.C. 162.

(m) *Kalu Vs. Emperor*—29 Cr. L.J. 208=106 J.C. 800.

(n) *Emperor Vs Amir Uddin*—A.I.R. 1923 Bom. 44=24 Bom. L.R. 534=23 Cr. L.J. 466=67 I.C. 818.

(o) *In re Pullannagari Rami Reddi*—A. I. R. 1941 Mad. 238=52 M.L.W. 420=1940 M.W.N. 1045=1940 M. Cr. C. 247=195 I.C. 53.

inferred therefrom and (2) in order to justify an inference of guilt the circumstances from which such an inference is sought to be drawn must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt (p).

For drawing an inference of guilt from circumstantial evidence the circumstances established must be such that the only possible inference, which a prudent man can draw from them, taken together is that the accused committed the crime and must be incompatible with the innocence of the accused. (q)

Circumstantial evidence is of great value as it enables the Court to draw inferences as to the existence or non-existence of a fact in issue. But the circumstances from which the conclusion is drawn must first be fully established. They should be of a conclusive nature and they should be consistent only with the hypothesis of guilt of the accused: otherwise, the accused will be entitled to the benefit of doubt. In other words there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused (r)

Circumstantial evidence is sometimes of great importance in criminal cases as it furnishes links in the chain of facts which go to establish the guilt of the accused and makes inference possible. It is, therefore, a principle of universal application that in order to justify the inference of guilt in cases dependent upon circumstantial evidence the incriminating facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt (s)

In the case of circumstantial evidence, the facts must be verified with scrupulous accuracy and the facts established must be consistent and consistent only with the accused being the culprit and should not be susceptible of any rational explanation. Inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis; than that of his guilt (t)

(p) *Gaya Prasad Vs. The State*—A.I.R. 1957 All. 459=1957 Cr. L.J. 803.

(q) *In re Papallugari Vaarareddy*—1955 And. W.R. 426 (A.I.R. 1952 S.C. 343=1952 S.C.J. 509=(1952) 2 M.L.J. 631 (S.C.) Foll.)

(r) *Sreenivasulu, in re.* (1957) 2 And. W.R. 63=1957 M.L.J. (Cr.) 368 =1957 Cr. L.J. 18=A.I.R. 1958 And. Pra. 37.

(s) *Kodur Thimma Reddi in re* (1957) 2 And. W. R. 156=(1957) Mad. L.J (Cr.) 421=A.I.R. 1957 And. Pra. 758=1957 Cr. L.J. 1091.

(t) *Madugula Jeremiah, In re.* 1957 Cr. L.J. 1071=A.I.R. 1957 And. Pra. 611=I.L.R. 1956 And. Pra. 173.

When the evidence against an accused person is of circumstantial nature, all the links in the chain must be conclusively established by cogent and unimpeachable evidence (u)

In dealing with circumstantial evidence, the rules specially applicable to such evidence must be borne in mind. In such cases there is always the danger that conjecture or suspicion may take the place of legal proof. In cases where the evidence is of a circumstantial nature the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to have any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused (v)

In order to justify the inference of guilt the circumstantial evidence must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt (w).

Ordinarily, circumstantial evidence cannot be regarded as satisfactory as direct evidence. The circumstances may lead to particular inferences and the relationship to true facts may be more apparent than real. The value of circumstantial evidence has to be assessed on consideration that it must be such as not to admit of more than one solution, and that it must be inconsistent with every proposition or explanation that is not true. If these conditions are fulfilled, circumstantial evidence may approximate to truth and be preferred to direct evidence (x)

Whenever circumstantial evidence is relied on to prove a fact, the circumstances must be proved and not by themselves presumed. No single item of evidence can be singled out and given prominence nor accused's theory of the case be withdrawn from consideration (y)

(u) *Janishah In re*. 1957 Mad. L.J. (Cr.) 496 = (1957) 2 And. W.R. 222.

(v) *Mt. Rup Devi Vs. State of Himachal Pradesh* - A.I.R. 1955 H. P. 15 = 1955 Cr. L.J. 679 (A.I.R. 1952 S.C. 343 Foll.)

(w) *Mt. Bhagan Vs. State of Pepsu* - I.L.R. (1954) Patiala 316 = A.I.R. 1955 Pepsu 33 = 1955 C.L.J. 537 (D.B.)

(x) *Kenchegowada Vs. P. Channiya* - 32 Mysore L.J. 123 = I.L.R. (1953) Mysore 152 = A.I.R. 1953 Mysore 22.

(y) *State Vs. Minaketan Patnaik* - I.L.R. (1952) Cut. 364 = 1952 Cr. L.J. 1393 = A.I.R. 1952 Orissa 267.

It is a fundamental principle of criminal jurisprudence that circumstantial evidence should point inevitably to the conclusion that it was the accused and the accused only who were the perpetrators of the offence and such evidence should be incompatible with the innocence of the accused (z),

67. Burden of Proof : It is the cardinal principle of criminal jurisprudence that innocence of an accused person is presumed till otherwise proved. It is the duty of the prosecution to prove the prisoner's guilt subject to any statutory exception a .

It is for the prosecution to prove its case in a criminal trial and it is only while considering whether the prosecution has proved its case that incidentally and where necessary, a criminal Court would have to consider the case made for the defence. It would not be right for a criminal Court to convict an accused person not so much because the prosecution case is established beyond a reasonable doubt by the prosecution evidence but because the defence theory appears to the Court to be unreasonable or does not appear to the Court to have been established (b).

In a criminal case it is for the State to show that the accused persons have committed the offence with which they are charged (c)

An accused person under the law is not called upon to prove his defence affirmatively : it is enough for him to show either by his own evidence or from the statements of the prosecution witnesses themselves that his defence is a probable one, and if that is done the truth of the prosecution case becomes doubtful, and the accused is entitled to an acquittal. It is the duty of the prosecution to bring home the guilt to the accused beyond all reasonable doubt (d).

It is a fundamental principle of criminal law that apart from such presumptions of fact as arise under Sec. 114 Evidence Act, all other facts have to be established by the prosecution in order to bring home the charge to the accused. When the prosecution adduce no evidence to establish the essential facts and the matter is in doubt the accused cannot be convicted (e).

(z) Eradu Vs State of Hyderabad—A.I.R. 1956 S.C. 316.

(a) Nisar Ali Vs. The State of Uttar Pradesh—A.I.R. 1957 S.C. 366.= 1957 Cr. L.J. 650=1957 S.C.A. 312=1957-1 Mad. L.J. (Cr.) 314.

(b) Jairamdas Jotsingh Menghani Vs. State—1956 Cr. L.J. 725=A.I.R. 1956 Bom. 426 D.B.

(c) State Vs. Sohan Lal-1956 Cr. L.J. 917=A.I.R. 1956 Punjab 159 (D.B.)

(d) Nathu Lal Vs. State-5 A.I.R. Cr. D. 713=A.I.R. 1953 Pat. 100= 1953 Cr. L.J. 842.

(e) Makar Bhoi Vs. State of Orissa-52 Cr. L.J. 1122=A.I.R. 1951 Orissa 357=17 Cut. L.T. 206.

The prosecution has to prove the guilt of the accused beyond all reasonable doubt. Even if there be some defect in the defence, not directly consistent with the innocence of the accused, the prosecution must prove its case. Where the prosecution alleges perfect ignorance of the actual occurrence, explanation given by the accused cannot be lightly put off (f).

68. **Duty of the Court :** The trial of a criminal case must be scrupulously fair to the accused and should be conducted with meticulous regard for rules of evidence and procedure. Inadmissible evidence must be to the prejudice to the accused, for it is but a short step from moral certainty to legal conviction (g).

It is the duty of the Criminal Courts to bring relevant evidence upon the record to see that justice is done. The presence of a counsel in a Criminal trial does not absolve the court from its primary and fundamental responsibility to ensure that all proper and necessary steps are taken to arrive at the truth (h).

Magistrates are expected to take intelligent interest in the matters before them and not to become hand maidens of the police (i).

It is the duty of the Magistrates not only to do justice but also to demonstrate that justice is being done. Slipshod and slovenly manner of trying cases brings the whole judicial administration into contempt (j).

Magistrates like other judicial officers have not only to see that justice is done but also that the parties before them are made to feel that justice is being done to them; and they should not act in any way which is hardly likely to instil or inspire the necessary confidence in the minds of the parties or the public (k).

Reasonable hypothesis consistent with the innocence of accused should be considered even if no plea had been expressly raised by accused or he had said some thing contrary to such plea (l).

(f) *Mt. Motia Vs. The Government*—A.I.R. 1951 Rajas 123=52 Cr. L.J. 981.

(g) *Sedam Govindu Vs. State* 1958 And. L.T. 154.

(h) *Jit Singh Vs. The Crown*—51 P.L.R. 65=A.I.R. 1949 E.P. 334=4 D.L.R. Simla 115=50 Cr. L.J. 840.

(i) *Nikka Ram Alias Nikka Vs. The State*—55 P.L.R. 441.

(j) *The State Vs. Ram Parkash*—6 D.L.R. Simla 65=53 P.L.R. 53=A.I.R. 1951 Simla 13.

(k) *Jallalluddin Moiddin Kunju Vs. State*—1951 K.L.T. 696=1952 Cr. L.J. 1111=A.I.R. 1952 T.C. 262=I.L.R. (1951) T.C. 302.

(l) *The State Vs. Tek Chand*—A.I.R. 1955 N.U.C. (Bom.) 4257.

69. Interpretation of evidence : Where the evidence in a criminal trial is in a state of uncertainty it must be interpreted most favourably to the accused (*m*)

If the purchaser demands wheat flour and the seller professes to sell pure wheat flour, which turns out on analysis to have even a negligible mixture of barley flour, warranty of quality expressly given is clearly broken and the seller is guilty of an offence. But if the seller warns him that negligible percentage of barley flour is mixed with or may be found to be mixed with it as is generally the case it could seem that the seller cannot be held guilty if a mixture of barley flour is detected to an extent which is negligible and which does not prejudice the purchaser. The object of the law is to prevent deception or misrepresentation. In such cases the seller is assumed to have given an implied warranty to the effect that the article of food which is offered for sale is in fact what it purports to be. So where he offers to sell wheat flour, which is generally understood to mean wheat flour with a negligible admixture of barley and it is in evidence that wheat flour however pure must contain mixture of barley flour to an extent which can only be traced by analysis and cannot be detected by an ordinary consumer, however fastidious he may be, the evidence falls short of the requirement of the offence (*n*)

70. No prohibition against inconsistent or alternative pleas. The position is the same both in civil and criminal cases and there is no prohibition against the accused taking any alternative and inconsistent pleas (*o*).

71. The court which can try an offence under the Act : Under Sec. 20 (2) no Court inferior to that of a Presidency Magistrate or a Magistrate of the First class shall try any offence under this Act.

72. Procedure for trial of offences under this Act : The Prevention of Food Adulteration Act does not lay down any special procedure for the trial of offences under this Act. So the procedure as prescribed under Sec. 5 Cr. P.C. is to be followed. Section 5 Cr. P.C. runs as follows :—

5. Trial of offences under Penal Code. (1) All offences under the Indian Penal Code shall be investigated, inquired into, tried and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the

(*m*) Mithan Lal Vs. Emperor—A.I.R. 1934 All. 439=1934 Cr. C. 517=149 I.C. 222=35 Cr. L.J. 913.

(*n*) Do :

(*o*) Mudaliar Vs. C. Raja Gopal Chariar—46 Cr. L.J. 17.

manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.

Under section 4 (v) of the Criminal Procedure Code summons case has been defined as meaning a case relating to an offence and not being a warrant case. Under Sec. 4 w) of the Criminal Procedure Code a warrant case has been defined as meaning a case relating to an offence punishable with death, imprisonment for life or imprisonment for a term exceeding one year. According to Sec. 16 of the Prevention of Food Adulteration Act, first offence is punishable only with imprisonment which may extend to one year. So under the above definition of summons case the first offence under the Act is triable as a summons case and the procedure to be followed in the trial is that of the summons case as given in Chapter 20, Sections 241 to 249 of the Cr. P.C. The second and the subsequent offences being punishable with imprisonment for more than one year according to Section 16 of the Act are triable as warrant cases and the procedure laid down in Chapter 21 Sections 251 to 259 Cr. P.C. is to be followed —

73. Procedure according to Schedule II of the Cr. P. C. in case of offences under laws other than the Indian Penal Code :— In the case of the first and second offence under Section 16 of the Prevention of Food Adulteration Act summons must issue in the first instance; while in the case of a third or subsequent offence warrant also can be issued in the first instance. The first and second offence is bailable while the third and subsequent offence is not bailable. No offence under the Act is compoundable. The offences under this Act are not cognisable as Sec. 20 lays down that no prosecution for an offence under this Act shall be instituted except by, or with the written consent of, the State Government or a local authority or a person authorised in this behalf by the State Government or a local authority :

Provided that a prosecution for an offence under this Act may be instituted by a purchaser referred to in Section 12, if he produces in Court a copy of the report of the Public Analyst along with the complaint.

74 Summary Trial :—The Act does not lay down any procedure for the trial of offences made punishable under the Act. So in this respect the procedure to be followed is as laid down in the Code of Criminal Procedure. Section 260 of the Code allows summary trial only in respect of offence not punishable with death, imprisonment for life or imprisonment for a term exceeding six months. Under section 16 of the Prevention of Food Adulteration Act there is no offence punishable with six months or

less than six months imprisonment. So there is no summary trial with regard to any offence under the Act.

In this connection the Director of Health Services by letter No. 11814-38-G. I. (3) dated 16th Oct. 1956 has directed that as the offences under section 16 are not triable summarily, copies of the documents in connection with the institution of prosecution should be supplied by the Food Inspector concerned to the accused.

15. Place of Inquiry or Trial—The subject is dealt in sections 177, 179, 180, 181, 183 and 185 of the Criminal Procedure Code. The said sections of the Criminal Procedure Code are reproduced below :

177. Ordinary place of inquiry and trial: Every offence shall ordinarily be inquired into and tried by a Court within the local limits of whose jurisdiction it was committed.

179. Accused triable in a district where Act is done—If a consequence ensues : When a person is accused of the commission of any offence by reason of anything which has been done and of any consequence which has ensued, such offence may be inquired into or tried by a Court within the local limits of whose jurisdiction any such thing has been done, or any consequence has ensued.

Illustrations

(a) A is wounded within the local limits of the jurisdiction of Court X, and dies within the local limits of the jurisdiction of Court Z. The offence of the culpable homicide of A may be inquired into or tried by X or Z.

(b) A is wounded within the local limits of the jurisdiction of Court X, and is, during ten days within the local limits of the jurisdiction of Court Y, and during ten days more within the local limits of the jurisdiction of Court Z. Court X is not a Court of Session. A may be inquired into or tried by X, Y, or Z, Court X being a Court of Session. The offence of causing grievous hurt to A may be inquired into or tried by X, Y and Z.

(c) A is put in fear of injury within the local limits of the jurisdiction of Court X, and is thereby induced, within the local limits of the jurisdiction of Court Y, to deliver property to a person who put him in fear. The offence of extortion committed on A may be inquired into or tried either by X or Y.

(d) A is wounded in the State of Saurashtra, and dies of his wounds in Poona. The offence of causing A's death may be inquired into and tried in Poona.

120. Place of trial where act is offence by reason of relation to other offence : When an Act is an offence by reason of its relation to any other Act which is also an offence or which would be an offence if the doer were capable of committing an offence, a charge of the first mentioned offence may be inquired into or tried by a Court within the local limits of whose jurisdiction either Act was done.

Illustrations :

(a) A charge of abetment may be inquired into or tried by the Court within the local limits of whose jurisdiction the abetment was committed, or by the Court within the local limits of whose jurisdiction the offence abetted was committed.

(b) A charge of receiving or retaining stolen goods may be inquired into or tried either by the Court within the local limits of whose jurisdiction the goods were stolen or by any Court within the local limits of whose jurisdiction any of them were at any time dishonestly received or retained.

(c) A charge of wrongfully concealing a person known to have been kidnapped may be inquired into or tried by the Court within the local limits of whose jurisdiction the wrongful concealing was done, or by the Court within the local limits of whose jurisdiction the kidnapping took place.

122. Place of inquiry or trial where scene of offence is uncertain, or not in one district only, or where offence is continuing over local limits of several Acts. When it is uncertain in which of several local areas an offence was committed, or

Where an offence is committed partly in one local area and partly in another, or,

Where an offence is a continuing one, and continues to be committed in more local areas than one, or

Where it consists of several acts done in different local areas.

It may be inquired into or tried by a Court having jurisdiction over any of such local areas.

123. Offence committed on a journey : An offence committed whilst the offender is in the course of performing a journey or voyage may be inquired into or tried by Court although or in the local limits of whose jurisdiction the offender or the person

against whom, or the thing in respect of which, the offence was committed, passed in the course of that journey or voyage.

185. High Court to decide, in case of doubt, district where inquiry or trial shall take place : (1) Whenever a question arises as to which of two or more Courts subordinate to the same High Court ought to inquire into or try any offence, it shall be decided by that High Court.

(2) Where two or more Courts not subordinate to the same High Court have taken cognizance of the same offence, the High Court within the local limits of whose appellate criminal jurisdiction the proceedings were first commenced may direct the trial of such offender to be held in any Court subordinate to it, and if it so decides all other proceedings against such person in respect of such offence shall be discontinued. If such High Court, upon the matter having been brought to its notice does not so decide, other High Court, within the local limits of whose appellate criminal jurisdiction such proceedings are pending may give a like direction, and upon its so doing all other such proceedings shall be discontinued.

76. Nature of the Examination under section 342 Cr. P. C.—Its non-observance—Effect :—It is an elementary principle in the procedure that the accused must be questioned with regard to the circumstances that appear against him. Where the accused has not been questioned at all, the failure to question him about the circumstances vitiates the entire proceeding. This is an illegality which cannot be cured by section 537 Cr. P. C. (a)

Under Sec. 342 Cr. P. C. a defective examination of the accused would not necessarily be fatal unless prejudice is shown. The question of prejudice would depend on the facts of each case. In particular circumstances even one question as to what the accused had to say on the evidence of the prosecution witnesses would be sufficient. The objection ought to be raised in the first Court of fact. When complaining of the non-observance of the section as resulting in prejudice, the appellant must in the grounds of appeal set out the questions that ought to have been asked and their answers as well. Not only that, the counsel for the appellant must also be in a position to show prejudice and not merely the possibility thereof. (b)

The examination of the accused in the nature of cross-examination is quite unfair to the accused and therefore not permissi-

(a) Jagannathan Vs. State-1958 Mad. L.J. (Cr.) 258- (1958) 1 Mad L.J. 242.

(b) Rangaiah Vs. The State—1957 An. L.T. 722.

ble. (c)

The burden of proving the guilt of the accused rests entirely upon the prosecution, and any false answer given to the questions put under S. 342 does not relieve the prosecution of the burden of proving the offence against the accused. Whether the accused makes any true statement or false statement is beside the point in appraising the prosecution case. The Court may undoubtedly draw such inference as it thinks just from the accused's refusal to answer or from any false answers given by the accused. This does not mean that this may be regarded as a substitute for the evidence which the prosecution must bring before the Court to establish the guilt of the accused. The utmost that can be said, where the accused does not answer the questions or answers them falsely, is that he leaves the points appearing against him in the evidence unexplained. If, upon the evidence, as it stands, the Court is not in a position to say that the offence has been brought home to the accused, the situation is not at all altered by what the accused may choose or may not choose to say under S. 342.

The conduct of the accused or his false answers to questions put under S. 342, Code of Criminal Procedure have to be viewed in the context of the evidence brought by the prosecution against him, and there can be no hard and fast rules as to the inference which may be drawn by the Court against the accused divorced from the context. (d)

The object of the examination of the accused under S. 342. Cr. P. Code, is to afford him an opportunity to explain away the circumstances which go against him and is not to elicit matter on the record about which there be no evidence. The court is not an investigating agency whose duty is to find out facts, which could be put before the court at the trial. It should not put questions in form which deprive the accused of the opportunity of giving an explanation about any conduct which could go against him (e).

The compliance with the provisions of S. 342 is not a mere idle formality. But even where the examination of the accused to enable him to explain the circumstances appearing against him is neither full nor very satisfactory, it does not vitiate the whole trial if no serious prejudice has been caused to the accused (f)

(c) Shankar Rao Vs. State—1957 All. W. R. (Sup.) 90—1958 Cr. L.J. 54—(1957) Mad. L.J. (Cr.) 805=A.I.R. 1958 Mysore 1.

(d) State Vs. Pannu--I.L.R. 36 Pat. 141 (1955 S.C. 801. Dist.)

(e) Bichehan Lal Vs. State 1957 All. L.J. 20—1957 All. W.R. (S.C.) 86—1957 Cr. L.J. 344=A.I.R. 1957 All. 184 (D. B.)

(f) Chikkarange Gowda Vs. Mysore State-- A.I.R. 1956 S.C 731.

As to what is or is not a full compliance with the provisions of S. 342 of the Code must depend upon the facts and circumstances of each case. It is not ordinarily necessary to put the evidence of each individual witness to the accused in his examination under S. 342. Where the accused was put the question "Have you got anything to say on the evidence of the witnesses?"

Held that was sufficient in the circumstances of this case to show that the attention of the accused was called to the prosecution evidence. It could not be said that the accused had been in any way prejudiced by the way he had been questioned under that section (g).

It is no doubt true that S. 342 contemplates an examination in court, and the practice of filing statements is to be deprecated. But that is not a ground of interference, unless prejudice is established and it is nothing unusual for the accused to prefer filing statements instead of answering questions under S. 342 lest they should suffer by inadvertent admissions or by damaging statements (h).

A judgment is not to be set aside merely by reason of inadequate compliance with S. 342 Cr. P. C. Clear prejudice must be shown. Where accused is represented by counsel at the trial and in appeal, it is up to the accused or his counsel in such cases to satisfy the Court that such inadequate examination has resulted in miscarriage of justice. If the counsel is unable to say that his client had in fact been prejudiced and if all that he could urge is that there was a possibility of prejudice, that is not enough.

It cannot be said as a matter of law that the non-examination or inadequate examination under S. 342 in a jury trial must be presumed to cause prejudice and that a conviction in a jury trial should be set aside and retrial ordered, if there is no adequate examination under S. 342. The question of prejudice is ultimately one of inference from all the facts and circumstances of each case. The fact of the trial being with the jury may possibly also be an additional circumstance for consideration in an appropriate case (i).

77. Application of Sec. 342 Cr. P. C. in summons cases—The provisions of the section were not meant to confound the accused. Nor were they intended to operate as a trap for the recovery. The compliance with the statutory provisions of S. 342 Cr. P. Code was never meant to be merely formal. The compliance therewith was intended to be real, genuine and substantial, so that

(i) *Bimballal Vs. Dnyan Sagar*—A.I.R. 1956 S.C. 451.

(ii) *Tilkeswar Vs. Bihar State*—A.I.R. 1956 S.C. 278.

(iii) *Mason Chaudhry Vs. West Bengal State* A.I.R.—1956 S.C. 536.

the Court should be able to pronounce that the prosecution has, on the whole, been just proper and fair, and the accused has not been prejudiced, damaged or misled in the way.

Any omission to question the accused on the certain point is not fatal to the trial. Before the omission can be said to vitiate the trial, it should be shown that the accused was prejudiced. Where the case is a summons case, where no charge is framed and the only materials from which the accused could ascertain the prosecution case against him are the questions put to him or the report made or the evidence adduced against him and none of these gave any intimation of the essential ingredients of the offence the procedure is open to the criticism of having failed to comply with the terms of S. 342. The omission to put a necessary ingredient of offence to the accused is a matter that cannot be lightly treated or brushed aside by the Court especially when the ingredient in question is the only ingredient on which the conviction of the accused is said to hang. The point assumes greater importance when the omission relates to a matter which was peculiarly within the knowledge of the accused, and he himself was in the best know of it. The position is further aggravated in cases when there was no allegation regarding the ingredient either in the report or in the evidence led by the prosecution. (j)

The mandatory provisions of Sec. 342 which require the Court to question the accused generally on the case after the examination of the prosecution witnesses are applicable to summons cases as the said provisions are for the benefit of the accused to enable him to explain any circumstances appearing in evidence against him. (k)

However, a contrary view has been expressed in *Raghavulu. P. In re* 1955 And. W. R. 743=1956 A. L. T. 319=A. I. R. 1956 And. 51=68 L. W. (And.) 510, in which following *I. L. R. 46 Mad. 758 (F.B.)* it is held that Sec. 342 does not apply to the trial in summons cases.

78. Application of Sec. 342 Cr. P. C. to summary trials :— Examination of the accused under Section 342 is essential even in summary trials. Where no question have been put to the accused under Sec. 342 for explaining the circumstances in the case from

(j) *Hukam Chand Vs. The State*--A.I.R. 1957 All. 705=1957 Cr. L.J. 1191.

(k) *Manna Vs. State*--1954 Cr. L.J. 1264=1954 All. W.R. (H.C.) 154=1954 All. L.J. 91=A.L.R. 1954 All. 578 (D.B.) (A.I.R. 1955 All. 217 Fol. View held in Mad. and Ran. F.B. decisions not followed). *Mactan Singh Vs. State*--1953 Cr. L.J. 1456=I.L.R. (1952) Pat. 632=A.I.R. 1953 Pepsu 125. *Debram Vs. State*--1952 Cr. L.J. 230=1952 A.L.J. 77=1952 A.W.R. (H.C.) 109=A.I.R. 1952 All. 33.

which an offence can be said to have been made out the defect is material in the trial. (1)

79. Contents of charge :—The law relating to the form of charges and the contents of the same is given in sections 221 to 223 of the Cr. P. C. and the same are reproduced below :—

221. Charge to state offence—(1) Every charge under this Code shall state the offence with which the accused is charged.

Specific name of offence sufficient description :—How stated where offence has no specific name. (2) If the law which creates the offence gives it any specific name, the offence may be described in the charge by that name only.

(3) If the law which creates the offence does not give it any specific name, so much of the definition of the offence must be stated as to give the accused notice of the matter with which he is charged.

(4) The law and section of the law against which the offence is said to have been committed shall be mentioned in the charge.

What implied in charge The fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case.

Language of charge. (6) In the presidency-towns the charge shall be written in English ; elsewhere it shall be written either in English or in the language of the court.

Previous conviction when to be set out. (7) If the accused having been previously convicted of any offence, is liable by reason of such previous conviction, to enhanced punishment, or to punishment of a different kind, for a subsequent offence, and it is intended to prove such previous conviction for the purpose of affecting the punishment which the Court may think fit to award for the subsequent offence, the fact, date and place of the previous conviction shall be stated in the charge. If such statement has been omitted, the Court may add it at any time before sentence is passed.

222. Particulars as to time, place and person. (1) The charge shall contain such particulars as to the time and place of the alleged offence and the person (if any) against whom, or the thing (if any) in respect of which it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged.

(1) Rachi Ram Vs. State--1957 M.P.C. 250=1957 Jab. L.J. 447=1957 Cr. L.J. 1402=1957 Madh Pradesh 210. Ghulam Mohd Vs. Municipal Committee Srinagar 1952 Cr. L.J. 965=1952 J & K. 21. Karnail Singh Vs. Mst. Bachan Kaur--1954 Cr. L.J. 334= A.I.R. 1953 Pb. 26=I.L.R. 1954 206.

(2) When the accused is charged with criminal breach of trust or dishonest misappropriation of money, it shall be sufficient to specify the gross sum in respect of which the offence is alleged to have been committed, and the dates between which the offence is alleged to have been committed without specifying particular items or exact dates, and the charge so framed shall be deemed to be a charge of one offence within the meaning of section 234 :

Provided that the time included between the first and last of such dates shall not exceed one year.

223 When manner of committing offence must be stated. When the nature of the case is such that the particulars mentioned in sections 221 and 222 do not give accused sufficient notice of the matter with which he is charged, the charge shall also contain such particulars of manner in which the alleged offence was committed as will be sufficient for that purpose.

In giving the particulars of the offence charged it would be better to set out the title of the Act and not merely an abbreviation, with which a particular accused may or may not be familiar. But in any case it is not enough merely to say that the offence has been charged under a particular section. The accused must be told what he is said to have done which he ought not to have done, i. e., that he sold or offered or exposed for sale as eatable ghee a substance which was not eatable. He must be told what the offence charged is, and that is particularly necessary under this Act, because under sub-section (3) S. 4 the seller may rely on a statutory defence, but he must give notice of that defence within three days of the service of the summons. If he does not know the particulars of the offence, it may be quite impossible for him to determine whether or not he can rely on the statutory defence. (m)

80. Special rules of evidence provided in the Act :— Under section 13 after the institution of the prosecution under the Act on the basis of the report of the Public Analyst the accused is entitled to apply to the court to obtain the certificate of the Director of the Central Food Laboratory on the deposit of the prescribed fee. The said certificate of the Director under the law as given in section 13 is final and conclusive evidence of the facts stated therein and it supersedes the report of the Public Analyst. Under section 19 (3) any person by whom a warranty, as is referred to in sub-section 2 is alleged to have been given shall be entitled to appear at the hearing and give evidence.

81. Appeal, Revision and reference :—The Prevention of Food Adulteration Act makes no special provisions for filing

(m) Emperor Vs. Sham Lal Jamna Das—A. I. R. 1941 Bom, 19=42 B.L.R. 1028=192 I.C. 277=42 Cr. L. J. 271.

appeal, revision or review and so the matter is governed by the provisions of the Code of Criminal Procedure given in Chapters XXXI and XXXII.

SECTION 17

17. Offences by companies. (1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of and was responsible to, the company for the conduct of, the business of the company, as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation. For the purposes of this section—

- (a) “company” means any body corporate, and includes a firm or other association of individuals; and
- (b) “director” in relation to a firm means a partner in the firm,

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COMMENTARY

1. Section explained and analysed:—(i) In the case of offence under the Act committed by a company both the company as well as every person who at the time the offence was committed was incharge of, and was responsible for the conduct of the Company's business shall be deemed to be guilty of the offence and as such is liable to be proceeded against and is punishable, unless such person proves that the alleged offence was committed without his knowledge or was committed in spite of his exercise of all due diligence to prevent its commission.

(ii) Where it is proved that the offence under the Act has been committed by a Company and with the consent or connivance of, or is attributable to any neglect on the part of any of the company's director, manager, secretary or other officer, such director, manager, secretary or other officer shall also be deemed guilty of the offence and liable to be proceeded against and punishable notwithstanding the provisions of sub-section (1) of section 17.

(iii) The word company in Section 17 means any body corporate and shall include a firm or other association of individuals and director in relation to a firm means a partner in the firm.

2. Company defined:—The word company has been defined in section 3 of the Companies Act, 1956 (Act No. I of 1956) as follows:—

(i) "company" means a company formed and registered under

this Act or an existing company as defined in clause (11)

(ii) "existing company" means a company formed and registered under any of the previous companies laws specified below:—

(a) Any Act or Acts relating to companies in force before the Indian Companies Act, 1866 (10 of 1866) and repealed by that Act ;

(b) The Indian Companies Act, 1866 (X of 1866) ;

(c) The Indian Companies Act, 1882 (VI of 1882) ;

(d) The Indian Companies Act, 1913 (VII of 1913) ;

(e) The Registration of Transferred Companies Ordinance, 1942, (LIV of 1942) ;

(f) Any law corresponding to any of the Acts or the Ordinance aforesaid and in force in the merged territories or in a Part B States, or any part thereof, before the extension thereto of the Indian Company's Act 1913 (VII of 1913) ;

(iii) "Private company" means a company which, by its articles :

(a) Restricts the right to transfer its shares, if any ;

(b) limits the number of its members to 50 not including

(i) persons who are in employment of the company, and

(ii) persons who having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased ; and

(c) prohibits any invitation to the public to subscribe for any shares in, or debentures of, the company :

Provided that where two or more persons held one or more shares in a company jointly, they shall, for the purpose of this definition, be treated as a single member ;

(vi) "public company" means a company which is not a private company.

(2) Unless the context otherwise requires, the following companies shall not be included within the scope of any of the expressions defined in clauses (i) to (iv) of sub-section (1), and such companies shall be deemed, for the purposes of this Act, to have been formed and registered outside India :—

(a) a company, the registered office whereof is in Burma, Aden or Pakistan and which immediately before the separation of that country from India, was a company as

defined in clause (i) sub-section (1),

- (b) a company the registered office whereof is in the State of Jammu and Kashmir and which immediately before 26th Janury, 1950, was a company as defined in clause (i) aforesaid.

3. **Director** :—The word Director has been defined in the Companies Act, 1956 in Section 2 (13) as follows :—

“director” includes any person occupying the position of director, by whatever name called ;

4. **Manager** :—The word Manager has been defined in section 2 (24) of the Companies Act, 1956 as follows :—

“Manager” means an individual (not being the managing agent) who, subject to the superintendence control and direction of the Board of Directors, has the management of the whole, or substantially the whole, of the affairs of a company, and includes a director or any other person occupying the position of a manager, by whatever name called, and whether under a contract of service or not ;

5. **Managing Agent** :—The word managing agent has been defined in section 2 (25) of the Companies Act, 1956 as follows :—

“managing agent” means any individual, firm or body corporate entitled, subject to the provisions of this Act, to the management of the whole, or substantially the whole, of the affairs of a company by virtue of an agreement with the company, or by virtue of its memorandum or articles of association and includes any individual firm or body corporate occupying the position of a managing agent, by whatever name called ;

6. **Managing Director** : The word “Managing Director” has been defined in section 2(26) of the Companies Act, 1956 which runs as follows :—

“Managing Director” means a director who, by virtue of an agreement with the company or of a resolution passed by the company in general meeting or by its Board of directors or, by virtue of its memorandum or articles of association, is entrusted with any powers of management which would not otherwise be exercisable by him, and includes a director occupying the position of a managing director, by whatever name called ;

7. **Officer** : The word “officer” has been defined in section 2 (30) of the Companies Act, 1956 which runs as follows :—

“Officer” includes any director, managing agent, secre-

aries and treasurers, manager or secretary ; where the managing agent or the secretaries and treasurers are a firm, also includes any partner in the firm ; and where the managing agent or the secretaries and treasurers are a body corporate, also includes any director, managing agent, secretaries and treasurers or manager of the body corporate but save in Secs 477, 478, 539, 543, 54 , 621, 62 and 683 does not includes an auditor ;

8. Secretary :—The word “Secretary” has been defined in section 2(45) of the Companies Act, 1956 as follows :—

“Secretary” means the person, if any, who is appointed to perform the duties which may be performed by a secretary under this Act ;

9. Firm and act of the firm :—The word “firm” has been defined in section 4 and the words act of a firm have been defined in sec. 2(a) of Indian Partnership Act, 1932 (Act IX of 1932) which are reproduced below :—

4. “Partnership” is the relation between persons who have been agreed to share the profits or a business carried on by all or any of them acting for all.

Persons who have entered into partnership with one another are called individually “partner” and collectively “a firm” and the name under which their business is carried on is called the “firm name”

2(a). an “act of a firm” means any act or omission by all the partners, or by any partner or agent of the firm which gives rise to a right enforceable by or against the firm ;

10. Person :—The word “person” is not defined in the Prevention of Food Adulteration Act, but has been defined in section 3(42) of the General Clauses Act which runs as follows :—

“Person” shall include any company or association or body of individuals, whether incorporated or not

11. Liability of corporation under English law :—A corporation is liable under sections 3 and 6 of the Sale of Food and Drugs Act, 1875. (a)

12. Prosecution, what it should prove to make the secretary or other officer liable :—Section 17 (1) of the Act clearly says that where an offence under the Act has been committed by

(a) *Pearks, Gunston & Tea, Ltd. Vs. Ward, Hennen Vs. Southern Counties Dairies Company.* (1902) 2 K.B. 1. See also *Chutter Vs. Freeth Pecoek, Ltd.*, (1911) 2 K.B. 832. *R. Vs. Ascanio Puck Co. and Paice.* (1912), 76 J.P. 487.

a company, every person who at the time the offence was committed was in charge of and was responsible to the Company for the conduct of the business of the Company, as well as the Company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. There is a proviso to this clause to the effect that the secretary or the other person can prove that the offence was committed without his knowledge and that in spite of the exercising all due diligence, he could not prevent the commission of such offence. But under clause (1) of Section 17, if the prosecution establishes that the offence had been committed with the consent or connivance of or that it is attributable to any neglect on the part of any director, manager, secretary or other officer of the Company, such director, manager, secretary, or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. To make the secretary or any other officer of the Company liable the prosecution must let in evidence that the secretary or other official was responsible to the society for the conduct of its business. Where however, the evidence adduced by the prosecution falls short of the strict standard of proof required for conviction, the secretary cannot be convicted (b).

13. Liability of a Cooperative Milk Society in case of sale of adulterated milk to one of its members: A Cooperative Society registered under the Madras Cooperative Societies Act (1932) has, as a body corporate, a separate existence apart from its individual members. Hence in the case of the Cooperative Milk Society registered under the Madras Cooperative Societies Act, a transfer of adulterated milk to one of its members is sale within the meaning of the Act (c).

14. Proprietor of a shop is liable though a sleeping partner:—A proprietor of a shop is liable for the sale of adulterated stuff sold in a shop, although such proprietor is only a sleeping partner (d).

In (1892) 66 L. T. 649 *Brown Vs Foot* the master was convicted as a seller of adulterated milk u/s 6 of Food and Drugs Act 1875 though the servant had adulterated it with water. *Hawki s* Judge said "I think myself that master for all purposes must be deemed to be the seller of the milk ; that is to say, it is impossible

(b) *The Public Prosecutor Vs R. Karupppian*—A.I.R. 1958 Mad. 183= (1958) 1 M.L.J. 20= J1 M.L.W. 78=1958 All. W.R. Sup. 27 (2).

(c) *Public Prosecetor Vs. Ramchandrayya*—A.I.R. 1948 Mad. 329= 61 M.L.W. 114=1948—1 M.L.J 117=1948 M.W.N. 159=49 Cr. L.J. 395= 1948 O.A. Sup. 54=1048 A.W.R. Sup. 54 (1881) 8 Q.B.D. 373=51 L.J.M.C. 25= 46 L.T. 347=30 W.R. 380 *Graff Vs. Evans* (1915) 1 K.B. 119=84 L.J.K.B. 242= 112 L.T. 152 *Humphrey Vs. Tudgey Dist.*

(d) *Gobind Ram Vs. Karachi Municipality*—A.I.R. 1938 Sindh 218= 178 I.C. 119=40 Cr. L.J. 7.

to say that he is not a seller of the milk. It may be said that the person who actually deals with the milk and sells it, and delivers it for the master, may also within the provisions of this Act of Parliament be the seller of the milk ; but at the same time, even if he so as I think he is, I think that the master himself is also the seller of the milk." The learned Judge further said :—

"I think however, that it is not necessary at all that the man who sells the milk, that is to say the principal or seller, is necessarily to be taken to be cognizant of the adulteration, the law making it, I think, an offence if adulterated milk is sold in point of fact, unless, indeed, the person who sells it is able to protect himself from liability to a penalty by reason of the provisions to be found in section 25.....Section 6 does not say, 'no person shall knowingly sell to the prejudice of the purchaser any article of which is not of the nature, substance, and quality demanded. The word 'knowingly' seems to have been carefully excluded by the Legislature from this section 6, and I can very well understand good reasons for it".

The above case was followed in (1898) 79 L T. 381 = (1899) 1 Q. B. 20 Parker Vs. Alder In that case, the seller undertook to sell pure unskimmed new milk in specified quantities and prices to be sent by the Great Western Railway to its destination ; but it was adulterated on the way and nevertheless the farmer who supplied the milk was held liable for its adulteration .. Lord Russell C. J. said :

The sole remaining question is this : Take it that the respondent was entirely innocent morally of the adulteration to which he was no party and could not protect himself, is he to be held answerable for it ? I think he has brought himself within the Act, taking into consideration the object and scope of the Act of Parliament. An innocent vendor is liable for the unauthorized act of his servant beyond the scope of his employment, and even when the act is done in express disobedience to his orders. I think therefore looking to the object of the Act and the absence of any provision or any reference to scienter he has brought himself within it. If he were to be relieved of responsibility a wide door would be opened to evade the beneficial provisions of the Legislature.

15. Servant of a firm selling adulterated ghee - Partner not sitting on the shop nor carrying on business, is not liable : Where a servant of the firm consisting of four partners has sold ghee that was not genuine, a partner, who does not sit in the shop and actually carry on the business himself, is not liable to criminal prosecution (e).

(e) Ram Chand Vs. Gaya Municipality—A.I.R. 1945 Pat. 264=26 P.L.T, 17=11 B.R. 462=46 Cr. K.J. 655=220 I.C. 95.

The condition of mind of a servant or agent is not imputed to the master or principal so as to make him criminally liable merely because his servant or agent commits a negligent or malicious or fraudulent act. But in the limited class of cases where a particular intent or state of mind is not of the essence of the offence, the acts or defaults of a servant or agent in the ordinary course of his employment may make the master or principal criminally liable, although he was not aware of such acts or defaults, and even where they were against the orders (f).

The following observations of Atkin Judge in (1917, 2 K. B. 836 Mousell Brothers Ltd Vs. L. N. W. Ry. Co. are relevant on the point of the liability of the master for the act of the servant.

"I think that the authorities cited by my Lord make it plain that while prima facie a principal is not to be made criminally responsible for the acts of his servants, yet the Legislature may prohibit an act or enforce a duty in such words as make the prohibition or the duty absolute ; in which case the principal is liable if the act is in fact done by his servants. To ascertain whether a particular Act of Parliament has that effect or not regard must be had to the object of the statute, the words used, the nature of the duty laid down, the person upon whom it is imposed, the person by which it would in ordinary circumstances be performed, and the person upon whom the penalty is imposed."

16. **Sale by one partner of a firm—Liability of others :—** The partners of a firm carrying on business as agents of the manufacturers of ghee, in shops bearing their names are each responsible for every thing sold there in in contravention of the provisions of the Act. It appears to be settled law that where the prohibition is positive against the sale of adulterated articles any person, who is legally responsible for such a sale comes within the section (g).

SECTION 18

18. **Forfeiture of property :** Where any person has been convicted under this Act for the contravention of any of the provisions of this Act or of any rule thereunder, the article of food in respect of which the contravention has been committed may be forfeited to the Government.

(f) Halsbury's Laws of England.

(g) Sew Karan Vs. Corporation of Calcutta I.L.R., 39 Cal 682=16 C.W.N. 455 [Brown Vs. Foot (1892) 17 Cox. C.C. 509 Fol.]

SYNOPSIS

1. Scope of the Section.
2. Order of destruction of the adulterated article of food.
3. Order for destruction of prohibited article even if no offence is committed in respect of it.
4. Power of confiscation discretionary.
5. Forfeiture to Government and
6. Some tins found to contain adulterated ghee. Order of forfeiture in respect of all tins. Appellate court setting aside the order and directing samples from the rest of the tins to be sent to the Public Analyst.—Legality of the order.

COMMENTARY

1. Scope of the section :—In addition to the penalties for the commission of an offence under the Act or any rule made thereunder, mentioned in sections 6 and 16 of the Act Sec. 18 provides a further penalty of forfeiture to the Government of any article of food in respect of which the offence has been committed. The order for forfeiture can be passed by the Court convicting the accused.

2. Orders of destruction of the adulterated article of food :—Under Sec. 11 (5) of the Prevention of Food Adulteration Act if it appears to the Magistrate on taking such evidence as he may deem necessary that the article of food produced before him under sub-section (4) is adulterated, he may order it :—

- (a) to be forfeited to the local authority, or
- (b) to be destroyed at the cost of the owner or the person from whom it was seized so as to prevent its being used as human food, or
- (c) to be so disposed of as to prevent its being again exposed for sale or used for food under its deceptive name, or
- (d) to be returned back to the owner for being sold under its appropriate name, after taking adequate guarantee from the owner.

The law does not authorise the magistrate to order destruction or other disposal of seized adulterated article except at the cost of the person in possession of the same at the time of the seizure (a)

3. Order for destruction of prohibited article even if no offence is committed in respect of it :—Under Sec. 11 (5) all that is required is that the Magistrate on taking evidence should think it necessary that the food concerned is adulterated. The intendment of this section is that a deleterious stuff should not be the subject of

sale and this could only be prevented by the destruction thereof. (b)

4. Power of confiscation discretionary :—The use of the word *may* in the section clearly shows that the confiscation is not automatic, but the power is given to the court to exercise its discretion and if the court thinks it advisable the court may order the confiscation as an additional punishment in suitable cases (c).

5. Forfeiture to Government and forfeiture to local authority :—Under section 18 forfeiture to Government can only be ordered if the accused is convicted of the offence under the Act, while under Sec. 11 (5) order for forfeiture to the local authority can be passed by the Magistrate whether the accused is ultimately convicted or not provided it appears to him on taking necessary evidence that the article of food produced before him under sub-section (4) of Sec. 11 is adulterated.

6. Some tins found to contain adulterated ghee. Order of forfeiture in respect of all tins. Appellate court setting aside that order and directing samples from the rest of the tins to be sent to the Public Analyst—Legality of the order :—Where in a case under S. 6 (1) (e) of the Bengal Food Adulteration Act the Magistrate acquitted the accused and directed the return of tins of mustard oil to him, and the order of acquittal was not appealed. The Sessions Judge cannot, on appeal proceed on the basis that the order of acquittal is wrong and direct the forfeiture of the tins in case the report of the Public Analyst is against the accused (d).

In a case under the Bengal Food Adulteration Act 15 tins of ghee were seized from the accused and the ghee in two of them was found to be adulterated. The Magistrate convicted the accused and passed an order u/s 12 (2) of the Bengal Act directing that all the tins of the ghee should be forfeited. On appeal, the Sessions Judge upheld the conviction but set aside the order of forfeiture in respect of 13 tins. He then ordered that samples should be taken from them and sent to the Public Analyst after which those found to be of adulterated ghee would be destroyed. Held, when the Sessions Judge sets aside the order passed with regard to 13 tins of ghee, he should have made a direction to return the tins to the accused (e).

(b) *In re Narsi Dayabhai* A.I.R. 1955 N.U.C. 1524 (Andhra).

(c) *In re G. C. Kesavalu Naidu*—A.I.R. 1955 N.U.C. 3920 (Madras).

(d) *Kishen Lal Vs. Shashi Bushan*—42 C.W.N. 220.

(e) *Brnarsi Lal Vs. Chairman, Asansole Municipality*—42 C.W.N.

SECTION 19

19. *Defences which may or may not be allowed in prosecution under this Act.*—(1) It shall be no defence in a prosecution for an offence pertaining to the sale of any adulterated or misbranded article of food to allege merely that the vendor was ignorant of the nature, substance or quality of the food sold by him or that the purchaser having purchased any article for analysis was not prejudiced by the sale.

(2) A vendor shall not be deemed to have committed an offence if he proves—

- (i) that the article of food was purchased by him was the same in nature, substance and quality as that demanded by purchaser and with a written warranty in the prescribed form, if any, to the effect that it was of such nature, substance and quality.
- (ii) that he had no reason to believe at the time when he sold it that the food was not of such nature, substance and quality : and
- (iii) that he sold it in the same state as he purchased it;

Provided that such a defence shall be open to the vendor only if he has submitted to the Food Inspector or the local authority a copy of the warranty with a written notice stating that he intends to rely on it and specifying the name and address of the person from whom he received it, and has also sent a like notice of his intention to that person ;

Provided further that the warranty given by a person resident in any area in which this Act is not in force, shall be a defence to the vendor only if the vendor proves to the satisfaction of the Court that he had taken reasonable steps to ascertain and did in fact believe in the accuracy of the statement contained in the warranty.

(3) Any person by whom a warranty as is referred to in sub-section (2). is alleged to have been given shall

be entitled to appear at the hearing and give evidence.

SYNOPSIS

1. Section 19 (1).
2. The vendor alone is deprived of the defences mentioned in Sec. 19 (1) and not any other person.
3. Mens rea.
4. General law on the point of Mens rea.
5. Sections of the I P.C. applicable to offences under the Prevention of Food Adulteration Act.
6. Accused not tied down to any particular method of establishing his defence.
7. A few relevant cases on similar provisions of some previous Provincial Acts.
8. Whether impossibility of compliance with the rules—a good defence?
9. Section 19 (2).
10. Warranty defined.
11. Warranty must be in writing in a prescribed form.
12. Invoice—Whether a Warranty?
13. Whether a label or a cash bill is a written warranty?
14. False warranty.
15. Warranties in matters of civil liabilities may be express or implied.
16. Time of giving warranty.
17. Successive warranties.
18. Whether warranty obtained by the employer when purchasing the article of food can be availed of by his servant who actually sold it?
19. Burden of proving ground of exemption.
20. section 19 (3).
21. Proof of warranty.
22. Compliance of Section 503 Cr. P.C. necessary for the validity of issue of Commission.

COMMENTARY

1. Section 19 (1):—This sub-section only deals with the following two defences which are usually put forward by the vendor in a prosecution for an offence pertaining to the sale of any adulterated or mis-branded article of food and both these defences have been ruled out absolutely by this sub-section:—

- (1) That the vendor was ignorant of the nature, substance or quality of the food sold by him.
- (2) That the purchaser having purchased the article in question for the purposes of analysis was not prejudiced by the sale.

2 The vendor alone is deprived of the defences mentioned in Sec. 19 (1) and not any other person :—The question arose in a case (a) under the U.P. Prevention of Adulteration Act (6 of 1912). Section 6 of the said Act contained a similar provision that

"in any prosecution under Sec. 4, it shall be no defence to allege that the vendor was ignorant of the nature, substance or quality of the article or drug sold by him" (a).

Their Lordship of the Allahabad High Court observed in the said case "as we read this section it means that when a vendor is prosecuted under Sec. 4, such plea of ignorance cannot be set up on his behalf. But there is nothing in the section to preclude a person who is not the vendor, but who is exposing the goods for sale, from pleading that he himself was ignorant of the quality, etc., of the ghee which the vendor was offering for sale. This plea would equally be available to a person who is accused of abetment of the sale. In our opinion, in order to justify the conviction of a person who is not himself the actual vendor it is necessary to prove the existence of circumstances from which it can easily be inferred that he was aware of the adulteration. It may be that the construction we put upon the word "vendor" in Sec. 6 of the Act is a narrow one and that it was really intended that it should cover not only the actual seller but other class of persons also who are mentioned in Sec 4 (1). But, on the other hand, the Legislature appears to have deliberately chosen to confine the prohibition contained in Sec. 6 to a vendor and we do not feel justified in extending that word beyond its ordinary significance of 'one who sells'. If that is so, then, on the principle of *evclusio unius inclusio alterius* the section appears to us to indicate that those classes of the persons mentioned in class—4, other than an actual seller are not to be precluded from setting up a plea of ignorance of adulteration".

In the above case a shopkeeper allowed an owner of ghee to sell it at his shop and in his presence in consideration of certain commission fixed by reference to percentage of sale price and it was held that "A person who does not himself sell the ghee on behalf of the owner, but allows the owner to sell it on the premises of his shop, the consideration for such licence being a commission fixed by reference to a percentage of the sale price, cannot be said to be actually taking part in the sale in the absence of evidence that he exercised any control over the vendor or had any property or other interest in the ghee sold by the vendor. The person is a mere licensor of a right to sell ghee on his premises. If however such person allows another to offer ghee for sale at his shop and in his presence and with profit to himself he must be deemed to be 'exposing' the ghee for sale equally and jointly with the owner of the ghee, i. e., the vendor.

There was previous somewhat similar case (b) of the same

(a) Municipal Board Bareilly Vs. Ram Gopal—1940 All. 517—1940 A.L.J. 653—194 A.W.R. 432—I.L.R. 1940 All. 643—42 Cr. L.J. 243—192 I.C. 83—13 R.A. 300.

High Court which was distinguished on the ground that in that case the commission agent actually took part in the sale of goods since the goods were sold in his presence and the sale consideration included his commission while here in the case of 1940 All. 517, the person from whose shop the ghee was sold was not even a commission agent in the ordinary sense for he admittedly did not himself sell the ghee on behalf of the owner but allowed him to sell it on his shop and he himself took no part in the sale.

Under the Madras Prevention of Adulteration Act (3 of 1918) also in a case (c) it was held that the ignorance of the accused of the nature, quality or substance of the article sold is no defence to a prosecution.

The knowledge and awareness of the purchaser about the adulteration is wholly immaterial as the object and policy of the statute is to protect the public by prohibiting the sale of adulterated milk or milk which did not come up to the prescribed standard of purity.

It is not justifiable to introduce as a test of liability the purpose for which adulteration was effected or importing the element of intention to commit fraud. The material provisions of the Act do not postulate that for establishing the offence of adulteration, it is either necessary to prove that the intention was to increase the bulk or measure or to debase the quality or that the intention was of a fraudulent nature. (d)

3. Mens rea :—Sec. 19(1) specifically enacts that the defence that the vendor was ignorant of the nature, substance or quality of the food sold by him is not open to him in a prosecution of an offence pertaining to the sale of any adulterated or misbranded article of food.

4. General law on the point of Mens rea : The fundamental principle of English Criminal Jurisprudence to use a maxim which has been familiar to English lawyers for nearly 800 years is *actus facit reum nisi mens sit rea*. An act does not make a man guilty without a guilty intention to do the guilty act which is made penal by the statute or Common Law : *Ailard v. Serfridge & Co., Ltd.* (e) But there is generally no room for the application of this

(b) *Emperor Vs. Ram Gopal* A.I.R. 1936 All. 865=9 R.A. 440= (1936) A.L.J. 1037=38 Cr. L.J. 277=1936 A.W.R. 875=166 I.C. 763.

(c) *Public Prosecutor Vs. Narayana Ayyar*—1940 Mad. 178=1939 Mad. W.N. 1128 (1)=50 M.L.W. 790=1939 M. Cr. C 288=186 I.C. 785=41 Cr. L.J. 377.=12 R.M. 681.

(d) *The Public Prosecutor Vs. Modi Kondayya*. 1947 Mad. 184=1946-2 M.L.J. 311=59 M.L.W. 608=1946 M.W.N. 669=1947 O.A. Sup 3=1947 A.W.R. Sup 3=231 I.C. 83.=48 Cr. L.J. 676=I.L.R. (1947) M. 632.

(e) L.R. (1925) 1 K.B. 129.

doctrine in the Indian Penal Statutes as their terms are precise and contain within themselves the precise and particular elements that go to make up the offences referred to in those statutes. The Indian Penal Code is one of the most exhaustive Codes of Penal Laws and devotes a full chapter towards this interpretation clause while an equally large part of it is devoted for the general exceptions which withdrew acts which would otherwise be an offence from that category. Its elaborate paraphernalia has been designed, it is said, to prevent captious Judges from wilfully misunderstanding the Code and cunning criminals from escaping its provisions. So in Indian Penal Statutes where the doctrine of mens rea is intended to come into operation and a guilty mind is deemed essential for the proof of an offence, the Statute itself uses words like "knowingly", "fraudulently", "negligently" and so on.

But there are now a large class of Penal Acts created under the State as well as Central Acts, which is not really criminal but which are prohibited by the levy of a penalty in the interests of the public. To such a category belong offences against Revenue, Adulteration Acts, Forest Laws, etc., penalties directed against public nuisances, and cases in which though the proceedings are criminal in form, they are only summary modes of enforcing civil rights. In such cases, the prosecution need only prove the prohibited act and the defendant must then bring himself with a statutory defence. The position is the same in England, America and India. (f)

"A statutory crime may or may not contain an express definition of the necessary state of mind. A statute may require a specific intention, malice, knowledge, wilfulness, or recklessness. On the other hand, it may be silent as to any requirement of mens rea, and in such a case in order to determine whether or not mens rea is an essential element of the offence, it is necessary to look at the objects and terms of the statute. In some cases, the Courts have concluded that despite the absence of express language the intention of the Legislature was that mens rea was a necessary ingredient of the offence. In others, the statute has been interpreted as creating a strict liability irrespective of mens rea. Instances of this strict liability have arisen on the legislation concerning food and drugs, liquor licensing and many other matters." (g)

'There are, however, a limited and exceptional class of offences which can be held to be committed without a guilty mind: but they are usually of a comparatively minor character. Apart from isolated and extreme cases, the principal classes of exception may perhaps be reduced to three and these three are: One is a

(f) Indian Process Chemical Laboratory Vs. Drugs Inspector 1958 Mad. L.J. 308.

(g) Halsbury's Laws of England (Edition 1955) Vol. 3 page 273.

class of acts which are not criminal in any real sense, but are acts which in the public interests are prohibited under a penalty. The second class is all public nuisance, and the third case in which, although the proceeding is criminal in form, it is really a summary mode of enforcing a civil right.

So far as the Indian Penal Code is concerned, every offence under it virtually imports the idea of criminal intent or mens rea. Intent denotes all those states of mind which the statute creating the offence in question regards as necessary that an accused must have in order to fix the guilt in him. But no question of mens rea arises where the Legislature has omitted to prescribe a particular mental condition as an ingredient of an offence, because the presumption is that the omission is intentional (h).

It is of the utmost importance for the protection of the liberty of the subject that the Court should always bear in mind that unless the statute, either clearly or by necessary implication, rules out mens rea as a constituent part of a crime, an accused should not be found guilty of an offence against the criminal law unless he has got a guilty mind. (i)

It is a general principle of criminal law that guilty intention is a necessary ingredient of a crime. The legislature may, by using express language or by implication, exclude an element of mens rea in any particular crime but unless such exclusion is deducible from the express language of the statute or by implication mens rea forms a necessary ingredient of an offence. (j)

The fundamental principle of English Criminal Jurisprudence, to use a maxim which has been familiar to English lawyers for nearly 800 years is, *actus non facit reum nisi mens sit rea*. An Act does not make a man guilty without a guilty intention to do the guilty act which is made penal by the statute or common law. But there is generally no room for the application of the doctrine in the Indian Penal Statutes. In the Indian Penal Statutes where the doctrine of mens rea is intended to come into operation and a guilty mind is deemed essential for the proof of an offence, the Statute itself uses the words like "knowingly", "willingly", "fraudulently", "negligently" and so on. Such knowledge can always be brought home by adducing circumstantial evidence. In establishing such guilty knowledge, actual or direct knowledge is not absolutely essen-

(h) Dr. Sir Hari Singh Gour's *The Penal Law of India* 6th Edition (1955). Section 81 I.P.C. page 207.

(i) *Sri Niwas Mall Vs. Emperor*—1947 P.C. 135—1947 A.L.J. 496—51 C.W.N. 900=49 B.L.R. 688=1947—2 M.L.J. 328—1947 M.W.N. 589=63 M.L.W. 634=1948 O.W.N. 52=26 Pat. 460—1948 O.A.P.C. 1=1948 A.W.R. P.C.I. [Brend Vs. Wood (1946) 160. J.P. 317 foll].

(j) *State Vs. Sheo Prasad*—1956 All. 610=1954 A.L.J. 767=1955 A.W.R. H.C. 184. (1947 P.C. 135, 1951 S.C. 204, 1945 All. 90 followed). *State Vs. S.P. Bhadani* A.I.R. 1959 Pat. 9=1958 B.L.J. 436.

tial, there being no doubt that a person who deliberately shuts his eyes to an obvious means of knowledge is equally liable. (k)

Mens rea is an essential ingredient in every offence. Offences under the Control Orders passed under the Defence of India rules are not offences of a comparatively minor character in respect of which the existence of mens rea could be ruled out as not being an integral part of the crime. (l)

Though it is true that *actus non facit reum nisi mens sit rea* is a cardinal doctrine of criminal law, the legislature can create offences which consist solely in doing an act, whatever the intention or state of mind of the person acting may be. Whether mens rea is constituent part of a crime or not must in every case depend upon the wording of the particular enactment. (m)

On a similar provision under the Indian Drugs Act (XXIII of 1940) in a very recent case of the Madras High Court it has been held, "for committing an offence under Sec. 18 (a) (i) read with section 27 of the Indian Drugs Act (1940) intention to do the guilty act which is made penal by the statute is not required. The Act creates an absolute liability and rules out mens rea as a constituent part of the crime. It would only affect the question of punishment." (n)

✓ 5. **Sections of the I.P.C. applicable to offences under the Prevention of Food Adulteration Act:**—This Act is a special law as defined in Section 41 I.P.C. "being" a law applicable to a particular subject". Sec. 40 of the Indian Penal Code as reproduced below details the various sections and the chapters of the Indian Penal Code applicable to offences under special law also.

Except in the (chapters) and sections mentioned in clauses 2 and 3 of this section the word "offence" denotes a thing made punishable by this Code.

In Chapter IV, Chapter VA and in the following Sections, namely, sections, 64, 65, 66, 67, 71, 109, 110, 112, 114, 115, 116, 117, 187, 194, 195, 203, 211, 213, 214, 221, 222, 223, 224, 225, 328, 329, 330, 331, 347, 348, 388, 389 and 445 the word "offence" denotes a thing punishable under this code or under any special or local law as hereinafter defined :

(k) In re Arcot Citizen Bank—A.I.R. 1957 Mad. 675=70 M.L.W. 267=(1957) 27 Com. Case 550=1957 Cr. L.J. 1279.

(l) Ramchandra Gupta in re : (1957) 1 Andh. W.R. 279.

(m) State Vs. Ismail Shakur—1958 Bom. 103=59 B.L.R. 491=I.L.R. (1957) Bom. 437.

(n) The Proprietrix of M/s The Indian Process Chemical Laboratory Vs. The Drug Inspector Madras—1958, 2 M.L.J. 308.

And in sections 141, 176, 177, 201, 202, 212, 216 and 441 the word "offence" has the same meaning when the thing punishable under the special or local law is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine.

On the basis of this Sec. 40 I.P.C. Sec. 109 has been applied to offences punishable under U.P. Prevention of Adulteration Act. (6 of 1912) and it was held that Sec. 40 I.P.C. in Para 2 provides that word 'offence' in Section 109 denotes a thing punishable under any special or local law as well as a thing punishable under the Indian Penal Code. The law of abetment, therefore, will apply to Sec. 4 of Prevention of Adulteration Act (U.P. Act). As there is no express provision for the abetment of this offence the penalty therefore, is the same as the penalty for the offence.(o)

Sec. 40 I.P.C., in Para 2 provides that the word "offence" in S. 109 denotes a thing punishable under any special or local law as well as a thing punishable under the Indian Penal Code. The law of abetment, therefore, will apply to S. 4 Prevention of Adulteration Act. As there is no express provision for the abetment of this offence the penalty, therefore, is the same as the penalty for the offence.(p)

Sec. 79 I.P.C. also comes within Chapter 4 and therefore an offence to which S. 79 refers includes an offence under a Local or Special Law e.g., under Punjab Pure Food Act. The accused in such a case is therefore entitled to show that he was using adulterated ghee under a mistake of fact (q).

A contractor engaged by the Public Works Department quarried metal in a place pointed out to him by the Department. The place was within the area of a Reserved Forest and permission of the Forest Department had not been obtained to the quarrying. A, was convicted of an offence under Section 32 (a), (b) and (c) of the Forest Act, read with Sec 40 and 114 of the Penal Code.

Held, that the principle of section 79 of the Penal Code applied to the case. The conviction and sentence were accordingly set aside (r)

(o) Municipal Board Bareilly V Ram Gopal—1940 All. 517—1940 A.L.J. 653—1940 A.W.R. 482—1.L.R. 45 All. 643—42 Cr. C.J. 243—192 I.C. 85—13 R. A. 300.

(p) Emperor V Ram Gopal—1936 All. 865—1936 A.W.R. 875—1936 A.L.J. 1037—1936 Cr. C. 1107—1937 A.L.R. 64.

(q) Abdul Aziz V Emperor—A.I.R. 1943 Pesh. 72—1943 Pesh. L.J. 72—209 I.P. 549—45 Cr. L.J. 95 (A.I.R. 1914 Mad. 277 explained and dissented)

(r) Emperor V Kassin Isab Sab—15 I.C. 802—14 Bom. L.R. 365—13 Cr. L.J. 530.

Sec. 84 I P C. which runs as follows is also in Chapter 4, and therefore, it applies to offences under Special Act (s).

“Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is capable of knowing the nature of the Act, or that he is doing what is either wrong or contrary to law.”

Note:—In proving the plea of insanity the accused is not called upon to prove the ingredients of the provisions of Sec. 84 Penal Code beyond all reasonable doubt in order to get an order of acquittal. It will be sufficient if on a review of all the evidence before the court, the court feels that the ingredients required under the section may reasonably be probable; the accused is entitled to an acquittal. In other words, on a review of the entire evidence, if the Court entertains a reasonable doubt about the guilt of the accused, he is entitled to an acquittal in the case, on the cardinal principle of criminal justice which has not been effected by the special provisions of Sec. 105 Evidence Act. (t)

6. Accused not tied down to any particular method of establishing his defence:—It is not correct to say that the presumption that mustard oil is not genuine can only be rebutted by following the oil from the mustard seeds throughout the process of manufacture right to its arrival in the shop of the accused and demonstrating that no deleterious substance had been introduced. There is no warrant for the prosecution that the accused person can be tied down to any particular method for establishing his defence. It is equally incorrect to say that when the accused shows that none of the common adulterants was present, the Court must hold that the presumption has been rebutted. The presumption is rebutted if the accused calls evidence which satisfied the Court that the article in question is derived exclusively from mustard seeds.

Where the analysts have found that the saponification value was excessive, the presumption that mustard oil was not genuine should be raised. But this presumption is rebutted when it has been proved that none of the common adulterants was present, and the Chemical Assistant in Government Test House has further explained that different mustard seeds give different saponification value owing to the particular properties of the

(s) Nitai Naik V The State—1956 Orissa 168=23 Cut L.T. 203-1957 Cr. L.J. 375=I.L.R. 1957 Cut. 408.

(t) See (t) above.

seeds (u).

7. **A few relevant cases on similar provisions of some previous Provincial Acts :—**Sec. 6(3) of the Bengal Food Adulteration Act (VI of 1919) exactly corresponds to section 19 (1) of the present Act. In a case under section 6 (3) of the Bengal Act the accused took delivery of some tins of mustard oil at the Railway Station for the purpose of selling them. On the same day, while the goods were actually on the railway premises a sample was taken from those tins by the Sanitary Inspector and it was found that mustard oil contained therein was adulterated. It was held that although the goods had actually left the railway premises, they were nevertheless being stored for sale by the accused. The requisite initial onus had been discharged by the prosecution. The accused came into physical possession of the consignment as soon as he took delivery thereof at the Railway Station and from the moment that he took such delivery, until the goods were actually exposed for sale in his shop there could be no doubt that he was actually storing them with a view to their ultimate disposal by sale. The fact that he could have had no opportunity to examine the nature of the goods between the time he took delivery of them and the time when a sample was taken was no defence in view of Sec. 6 (3) of the Bengal Food Adulteration Act, 1919 (v)

Under a similar provision of section 6 (2) of the Madras Prevention of Adulteration Act it was held that certain conditions have to be fulfilled before an accused can rely upon a defence that he had no reason to believe at the time when he sold the article of food that it was not of such nature, substance or quality as described in the jars and in all such cases, therefore, it will be no defence to say merely that the vendor was ignorant of the thing substance or quality. (w)

The question of knowledge or belief that the food is not genuine does not arise under section 3 of the Bihar and Orissa Food Adulteration Act, while under section 273 I.P.C. the gist of the offence is the sale, offer for sale or exposure for sale as food or drink any article which has been rendered or has become noxious or is in a state unfit for food or drink knowing or having reason to believe that the same is noxious as food or drink (x)

(u) Superintendent and Remembrancer of Legal Affairs, Bengal Vs. Kshitish Chandar—A.I.R. 1939 Cal. 667=43 C.W.N. 1030=184 I.C. 423=I.L.R. 1939-2 Cal. 163.

(v) Hari Rakshak Vs. Dist Board, Birbhum. A.I.R. 1941 Cal 150=72 C.L.J. 531=44 C.W.N. 1139=42 Cr. L.J. 522-13 R.C. 492=194 I.C. 136.

(w) The Public Prosecutor Vs. Parthasarathi Aiyangar 1955 M.W.N. 486=(1955) 1 M.L.J. 309=68 M.L.W. 227.

(x) Awadh Parsad Vs. State 6 D.L.R. (Pat) 154-5 A.L. Cr. D. 719.

It is no defence that the accused was under the impression that it was lawful to manufacture and sell mixed oil under the description of mixed mustard oil though in case of first offence it would be inappropriate to impose maximum sentence which can be imposed for the first offence. (y)

Where a person obtains goods from a reputed wholesale dealer and sells them in the open tins duly labeled in the condition in which they are received, he is not liable to be punished under the Bihar and Orissa Prevention of Food Adulteration Act, 1919 unless there is reason to believe that he did not believe the goods to be genuine. The dealer is not bound to make some experiment to test the quality of the goods. (z)

The food adulteration acts are intended to protect the public from using adulterated articles and, therefore, the Acts have made it penal to sell these adulterated articles irrespective of the fact whether the purchaser knew the article to be adulterated or otherwise. Articles mentioned in Section 6 of the Bengal Food Adulteration Act, 1919 are ordinary articles of food & it is no defence to say that these articles can be adulterated and sold in the market with the publication of the fact that they are adulterated. (a)

In case of possessing prohibited articles or in the matter of doing an act, prohibited by law, the question of mens rea is not material and the person committing the offence can be convicted because of the doing of the act itself. Hence, the plea of absence of "mens rea" or guilty knowledge is not available to one found to possess tea which is declared to be adulterated by a competent authority. (b)

The ignorance of the accused of the nature or quality of the article is no defence to a prosecution under Sec. 5 (1) (b). The price of the ghee served by the hotel-keeper to his customers with their meals being necessarily included in the price of the meals the service of ghee with meals amounts to sale and the acquittal of the accused on the ground that the ghee cannot be sold is untenable. (c)
[A case under Madras Prevention of Food Adulteration Act].

(y) *Karnidan Sarda Vs. Emperor* - 16 P.L.T. 655=2 B.R. 8-8 R.P. 205 =A.I.R. 1935 Pat. 521=36 Cr. L.J. 1439=158 I.C. 728=(1935) Cr.C. 1279.

(z) *Branjivan V Emperor* - 32 Cr. L.J. 741=12 P.L.T. 470-I.R. (1931) Pat. 221=A.I.R. 1931 Pat. 337=131 I.C. 541=1931 Cr. C. 785(1).

(a) *Rakhal Chandra Dutta V Purna Chandra Ghosh* A.I.R. 1930 Cal. 273=34 C.W.N. 281=51 Cal. L.J. 227=(1930) Cr. C.=353=57 Cal. 1123-I.R. (1930) Cal. 809=127 I.C. 57=31 Cr. L.J. 1051.

(b) *Ramesh Chandra V The State*. A.I.R. 1955 N.U.C. 1417 (Assam).

(c) *Public Prosecutor Vs. Narayana Ayyar* 186 I.C. 785=41 Cr. L.J. 377=12 R.M. 681=50 L.W. 790=1939 M.W.N. 1128 (1)-A.I.R. 1940 Mad. 173.

8. Whether impossibility of compliance with the rules—a good defence : Under the Prevention of Food Adulteration Act and the rules framed thereunder, the moisture content of butter should not exceed 16% (Rule 46). The fact that in butter obtained by hand churning process adopted in village parts it is impossible and is not practicable to avoid the higher percentage of moisture is no justifiable defence. (d)

9. Section 19 (2) :—Under this sub-section the vendor has been allowed to prove by way of defence that the article of food sold by him was the same in nature, substance and quality as demanded by the purchaser and as purchased by him with a written warranty in the prescribed form to the effect that it was of such nature, substance and quality and that at the time of the sale he had no reason to believe that the article sold by him was not of such nature, substance and quality and that he sold it in the same state as he purchased it : Provided that the said defence is open to the vendor only if he has submitted to the food inspector or the local authority a copy of the said written warranty with a written notice stating that he intends to rely upon the same and specifying the name and address of the person from whom he purchased it and has also sent a similar notice of his intention to that person : Provided further that in case the person who gave the said written warranty is resident of the area where this Act is not in force, the said defence is open to the vendor only if he proves to the court's satisfaction that he has taken reasonable steps to ascertain and did in fact believe in the accuracy of the statement contained in the said written warranty.

10. Warranty defined :—The word warranty is not defined in the Act, but it is defined in section 12 of the Indian Sale of Goods Act, 1930 which also makes a distinction between an ordinary condition in a contract of sale and a warranty. Sec. 12 of the Indian Sale of Goods Act is reproduced below :—

12. (1) A stipulation in a contract of sale with reference to goods which are the subject thereof may be a condition or a warranty.

(2) A condition is a stipulation essential to the main purpose of the contract, the breach of which gives rise to a right to treat the contract as repudiated.

(3) A warranty is a stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated.

(d) A.S. Arunachala Nadar Vs. State (1958) 2 M.L.J. 408=(1958) M.L.J. (Cr.) 836.

(4) Whether a stipulation in a contract of sale is a condition or a warranty depends in each case on the construction of the contract. A stipulation may be a condition, though called a warranty in the contract.

11. Warranty must be in writing in a prescribed form :—The Central Government has under section 23 of the Act framed rule 12 (a) concerning the form of warranty required under this sub-section and the same is reproduced below :—

12(a) Warranty.—Every trader selling an article of food to a vendor shall if the vendor so requires, deliver to the vendor a warranty in Form VIA :—

Provided that no warranty in such form shall be necessary if the label on the article of food or the cash memo delivered by the trader to the vendor in respect of that article contains a warranty certifying that the food contained in the package or container or mentioned in cash memo, is the same in nature, substance and quality as demanded by the vendor.

Explanation :—The term “trader” shall mean an importer, manufacturer, wholesale dealer or an authorised agent of such importer, manufacturer or wholesale dealer.

Form No. VI (A) of the warranty is given in the appendix under rule 12 (a).

Note :—The explanation to Section 12 (a) and the Form VIA have been added by Notification No. S. R. O. 2755, dated 20th November, 1956.

12. Invoice-Whether a warranty ?—Invoice is not a warranty. See commentary under section 16.

13. Whether a label or a cash bill is a written warranty ?—A label or a cash bill is not a written warranty. Where the defence was that the accused was not responsible for the alleged adulteration and that he had sold the article in the same condition in which he received it, such a defence is expressly excluded unless other requirements as to warranty etc. are also proved (e).

A bazar chaudhri took a sample of ghee from the shop of the accused and the analyst stated that it contained fat or oil foreign to pure ghee. The accused produced a number of cash vouchers showing that a wholesale firm supplied him ghee on various occasions. In the cash vouchers there was a printed line which stated that the ghee sold by the firm was actual village ghee and that the groceries were sold at a cheap rate ;

(e) Public Prosecutor Vs. Pulliah Chetty — A.I.R. 1946 Mad. 414 = 1946 M.W.N. 352 = 1946-1 M.L.J. 461 = 59 M.L.W. 322 = 226 I.C. 265 = 47 Cr. L.J. 869.

Held that the line was not in any sense a written warranty and the mere fact that the signature of the vendor was at a totally different place in the bottom of the form did not imply that the signature was attached to that line. The line in question was mere advertisement alleging that the ghee was good and the groceries were cheap.

Held further that if a written warranty had been produced of a proper nature it would not have been incumbent on the Bazar Chaudhri to go to the wholesale dealers and obtain a sample. It would have been for the accused to ask the Bazar Chaudhri to accompany him to the wholesale shop and for the accused to ask for a sample to be taken from the wholesale shop and submitted for analysis(a).

Note:—However under rule 12-A no warranty in the prescribed form is necessary if the label on the article of food or cash memo delivered by the trader to the vendor in respect of the article sold contains a warranty certifying that the food contained in the package or container or mentioned in the cash memo, is the same in nature, substance and quality as demanded by the vendor. The term trader has been defined in the explanation to rule 12-A as meaning an importer, manufacturer, wholesale dealer or an authorised agent of such importer, manufacturer or wholesale dealer.

14. False warranty :—See Comentary uuder Sec. 16.

15. Warranties in matters of civil liabilities may be express or implied :—See comentary under Sec. 16.

16. Time of giving warranty :—A warranty may be either included in the contract of sale, or may be given after the contract of sale is completed. There is no necessity that the word warranty or promise should occur in the bargain. Nor it is necessary that the statement or representation should be simultaneous with the close of the bargain ; if it be a part of the contract it matters not at what period of the negotiation it is made(b).

When warranty is given after the contract of sale is completed it must be supported by fresh consideration (c).

As to the "warrantizaudo vendidit", which meant that the defendant had sold by warranting, Hold C.J. in (d) observed, "that will be so, as if upon a treaty about the buying of certain goods, the buyer should ask the seller if he would warrant them

(a) Pancham Ram V Emperor A.I.R. 1938 All. 538=1938 A.W.R. 490=1938 A.L.J. 780=I.L.R. (1938) All. 797=177 I.C. 704=1938 All. L.R. 778=39 Cr. L.J. 959.

(b) Per Jervis C.J. in Hopkins Vs. Tanqueray (1854) 15 C.B. 130.

(c) Roscorla V Thomas (1842) 2 Q.B. 234.

(d) Lysney V Selby 2 L.D. Raym 1120.

to be of such a value and to be his own goods, and the seller set the price, and then the buyer should take time to consider for two or three days, and then should come and give the seller his price, though the warranty here was before the sale, yet this will be well, because the warranty is the ground of the treaty, and this is selling with a warranty.

“But it is otherwise if the warranty be after the sale ; as if a man sells goods and afterwards warrants them, such a warranty is not good. But in other case the warranty is part of the contract”.

In (e) it was held : A verbal representation by the seller to the buyer, in the course of dealing that he “may depend upon it; the horse is perfectly quiet and free from vice” is a warranty. The representation amounts to a warranty if made before the bargain takes place. The term warrant or warranty is not necessary.

17. Successive Warranties :—In the case of successive warranties where A sells an article of food to B with a written warranty and B sells the same to C with a similar warranty, though C on being prosecuted for selling adulterated article can rely successfully on the warranty received by him from B, but B on being prosecuted for giving a false warranty cannot plead as a substantive defence the warranty he received from A (f).

18. Whether Warranty obtained by the employer when purchasing the article of food can be availed of by his servant who actually sold it ? :—On the literal interpretation of section 19 (2) the warranty can be availed of by the vendor provided he himself purchased the article with written warranty in the prescribed form. But the English law as given in Hal's Bury's Laws of England 3rd Edition Vol. 17 page 600 it is laid down that when the accused is a servant of the person who actually purchased the article under a warranty is entitled to rely on the said warranty in defence in the same way as his employer would have been entitled to rely upon if the employer had been the actual vendor and as such the accused.

19. Burden of proving ground of exemption :—It is for the defence to prove that before the sale the seller brought to the notice of the purchaser either by means of a label distinctly and legibly written or printed on or with the article or otherwise the fact that such matter or ingredient had been so added or mixed. Under Section 105 Evidence Act the duty lies on the defence of proving

(e) *Cave V Coleman* (1828) 3 Man and Roy 2 K B.

(f) *Halsbury's Laws of England* 3rd. Ed., Vol. 17 page 601 *Maaners*, Vs. *Tyler* (1902) 1 K.B. 901-71 L.J. K B. 585-86 L. T. 716.

that the case came within the exemption (g).

It is for the accused to prove the ground of exemption. It is necessary that there should be a label distinctly and legibly written or printed on or with the article showing that any such matter or ingredient as is referred to in the Act has been added to or mixed with the article of food. It is necessary for the accused claiming exemption to prove not only that the article sold has been purchased by the accused as the same in nature, substance and quality as that demanded by the purchaser and with written warranty to the effect that it was of such a nature, substance and quality but also that he had no reason to believe at the time when he sold it that the article was not of such a nature, substance and quality as aforesaid and also that he sold it in the same state in which he purchased it. Consequently, when there was neither a label nor was there any written warranty the accused cannot take up the said defence and then cannot contend that he could have taken defence but for non-examination under Sec. 342 Cr. P. C. It cannot therefore be held that the accused was prejudiced because he was not examined under Sec. 342 Cr. P. C. (h).

20. Section 19 (3) :—Under this sub-section the person who is alleged to have given the warranty relied upon as is referred to in sub-section (2) has been given the right to appear at the hearing and give evidence in case he is present.

21. Proof of Warranty :—In case the warrantor is personally present in court at the hearing he is entitled to give evidence and even the accused has a right to produce him as his defence witness. In case he is not present, he can be summoned as a defence witness and even he can be examined on commission where necessary, and when ends of justice require in accordance with the provisions of sections 503 to 508 (A) Cr. P. C.

22. Compliance of Section 503 Cr. P. C. necessary for the validity of issue of Commission:—If the essential pre-requisite for the validity of the issuing of a commission under section 503 Cr. P. C. has not been complied with, the evidence so taken would be improper and could not be used against the accused. This is a defect which goes to the root of the matter and is vital in content. Thus entire proceedings are vitiated and the evidence of the witnesses taken on commission has to be completely eschewed from the record (i).

(g) Rameshwar Das Vs. Emperor—A.I.R. 1936 All. 86=8 R.A.695=37 C3. L.J. 360=1936 A.L.J. 311=1936 A.W.R. 180=160 I.C. 1026.

(h) Emperor Vs. Brij Lal—A.I.R. 1937 Oudh 130=8 R.O. 263=1936 O.W.N. 215=37 Cr. L.J. 408=12 Lucknow 24=160 I.C. 489.

(i) Dharamanand Pant V State of U.P.—1957 B.L.J.R. 470=A.I.R. 1957 S.C. 594=1957 M.P.C. 451=1957 Cr. L.J.894=1957 L.J. (Cr.)337=1957 S.C.J. 431=1957 All. W.R. (H.C.) 520=1957 All. L.J. 636.

Note :—Since the amendment of Section 503 Cr. P. C. by Section 97 of Act No. XXVI of 1955 every magistrate before whom the proceedings are pending can himself exercise the powers of issuing commission if he finds it expedient, necessary or essential. (j)

SECTION 20

20. Cognizance and trial of offences. (1) No prosecution for an offence under this Act shall be instituted except by, or with the written consent of, the State Government or a local authority or a person authorized in this behalf by the State Government or a local authority.

Provided that a prosecution for an offence under this Act may be instituted by a purchaser referred to in Sec. 12, if he produces in court a copy of the report of the Public Analyst along with the complaint.

(2) No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence under this Act.

SYNOPSIS

1. Section explained and analysed.
2. Applicability of section 5 and 29 of the Criminal Procedure Code to the complaints for offences under the Act-
3. Place of Enquiry or Trial.
4. Local authority.
5. Whether sanction of the State Government or of a local authority can be general?
6. Who can exercise the powers in the case of Municipalities of filing prosecutions or giving authority or written consent.
7. Whether there can be re-delegation of delegated authority under section 20 for launching prosecution?
8. When and how a private purchaser under Section 12 can file a complaint under the provisions of Sec. 20.
9. Offence committed on 21.7.55 Prosecution under the present Act by Assistant Medical Officer of Health prior to authorisation by the State Government, whether lawful?
10. Administrator under Sec. 554 of Bengal Municipal Act, whether a local authority

(j) See judgment (i) on page 307.

- for sanctioning prosecution under section 20.
11. Effect of withdrawal of complaint launched without valid sanction—No bar to subsequent complaint after obtaining valid sanction. Sec. 403 Cr. P.C. No Bar
 12. Sanction for prosecution of a firm, whether amounts to sanction for prosecution of individual partners?
 13. Absence of required complaint whether an irregularity curable u/s 537 Cr. P. C.?
 14. Limitation for filing complaint under the Act.
 15. Some relevant judgments under Provincial Acts dealing with authorities to launch prosecution.
 16. Notifications made by some States under Sec. 20.

COMMENTARY

1. Section Explained and analysed :— Under Section 20 (1) prosecution for an offence under this Act can be instituted only.

- (i) By the State Govt. or by a Local Authority or by a person authorised in this behalf by the State Govt. or Local Authority, or
- (ii) By any person with the written consent of the State Govt or local Authority, or a person authorised in this behalf by the State Government or a Local Authority, or
- (iii) By a purchaser referred to in Section 12 in case he produces in court along with his complaint a copy of the report of the Public Analyst.

Under Section 20 (2) no court inferior to that of a Presidency Magistrate or a Magistrate of the 1st Class can try any offence under this Act.

2. Applicability of Sections 5 and 29 of the Cr. P. C. to the complaints for offences under the Act :— Under Section 5 of the Code of Cr. Procedure all offences under any law other than the I. P. C. have to be investigated, inquired into, tried and otherwise dealt with according to the provisions of the Cr. P. C., but subject to any enactment for the time being in force regulating the manner or place of investigating, enquiring into, trying or otherwise dealing with such offences. According to Section 29 Cr. P. C. subject to the other provisions of the Cr. P. C. any offence under any law other than I. P. C. shall when any court is mentioned in this behalf in such law, be tried by such Court. So according to Sections 5 and 29 Cr. P.C. the jurisdiction of the Court to entertain and try complaints for offences under the Act is to be determined by the provisions of Section 20 (2) of the Prevention of Food Adulteration Act.

3. Place of enquiry or trial :—See commentary under Section 16 note 75.

4. Local Authority:—Please see definition given on section 2(viii) and for commentary under the said section notes No. 52 to 57.

5. Whether sanction of the State Government or of a local authority can be general ?—Section 20 does not require that for each particular prosecution for a particular offence under the Act, the sanction should be obtained separately. There can be general sanction also to any particular person or officer for launching prosecutions for all offences under the Act. It was so held under some of the previous Provincial Acts (a).

6. Who can exercise the powers in the case of Municipalities, of filing prosecution or giving authority or written consent:—Unless the Municipal Act provides otherwise the authority must be given by the Municipal Commissioners. In the case of Municipality under the U. P. Municipalities Act, the Chairman of a Municipal Board can exercise the powers given to the Board under section 12 of the U.P. Prevention of Adulteration Act, to authorise any other person to act on behalf of the Municipalities for prosecuting persons under the U. P. Prevention of Adulteration Act in view of Section 50 (e) of the U. P. Municipalities Act. Hence a prosecution started at the instance of a Medical Officer who is authorised in this behalf by the Chairman of the Municipal Board will be valid. The mere fact that the copy of the order authorising the Medical Officer to institute prosecution is not filed with the complaint will not justify its dismissal (b).

7. Whether there can be redelegation of delegated authority under Sec. 20 for launching prosecution ?—Under Sec. 20(1) a prosecution for an offence under the Act can be lodged by any person with the written consent of the State Government or a local authority or by any person with the written consent of the person authorised in this behalf by the State Government or local authority. So according to Sec. 20 (1) any person if so authorised by the State Government or local authority can delegate his powers so launch prosecution with his written consent.

The U. P. Government has by Notification No. 10305/XVI (PH)461-52 dated 16th December 1955 authorised certain officers to institute or to give written consent for instituting prosecution under the said Act, in their respective areas mentioned in the Notification. This also indicates that delegated authority under Section 20(1) can be redelegated. (c)

(a) *Makhan Lal Bhomik V. Ram Bhakatsharma*, 1953 Cr. L.J. 1134=A. I.R. 1953 Cal. 485; *State of Bihar V. Nanhak Sao* 1955 N.U.C. 454 Pat.

(b) *Municipal Board Brindaban V. State* A.I.R. 1952 All. 209=1952 Cr. L.J. 392.

(c) *Lakhpat Rai Vs. State*—5 D.L.R. (All). 298=4 A.I. Cr. D. 554.

Where a District Health Officer who must be deemed to be a local Executive Officer u/s 16, Madras Public Health Act, 1939 as a local Executive Officer, delegates under Section 3 of the Madras Prevention of Adulteration Act, 1918, his powers and duties under the Act (including the powers under Section 16) to the Executive Officer of a Panchayat Board, a prosecution initiated at the instance of the latter is valid (d).

However, there is a judgment of the Madras High Court in which a Sanitary Inspector of a town or Panchayat authorised to launch prosecution under the Madras Act No. 3 of 1918, was held incompetent to launch prosecution under section 20 of the Central Act as the delegation that is referred to in section 3 and the rules made under the Madras Act will amount to delegation of a delegated authority which is not valid under section 20 of the Central Act. The prosecution will therefore be launched by one who is neither authorised by the government nor by the Municipal Board (e).

8. When and how a private purchaser under section 12 can file a complaint under the provisions of Sec. 20 :—The private purchaser before he can file a complaint in accordance with the provisions of Sec. 20, must file certificate of the Public Analyst along with his complaint and must have complied with the provisions of Sec. 12 both in the purchase of the article in question as well as in obtaining the report of the Public Analyst concerning the article purchased. The said private purchaser does not require any authority or written consent under Sec. 20 (1) for launching prosecution for an offence under the Act.

9. Offence committed of 21·7·55. Prosecution under the present Act by Assistant Medical Officer of Health prior to authorisation by the State Govt., whether lawful ?—Where the offence was committed after the commencement of the Central Act and the prosecution was launched under Section 16 read with section 7 Prevention of Food Adulteration Act, by Assistant Medical Officer of Health prior to the enforcement of the rules made by the State Government under the Act. It was held, that the State Government had not authorised Assistant Medical Officer by that date to prosecute any person for an offence under the Act and so he could not institute a complaint in view of section 20 of the Act. The contention that by virtue of section 25 (2) of the Act the powers which the Assistant Medical Officers exercised under U. P. Pure Food Act and the rules made there under could be exercised by them under the Central Act was not tenable because the Food

(d) Public Prosecutor Vs. Nagamma—62 M.L.W. 650=1949 M.W.N. 571=1449 2 M.L.J. 405=A.I.R. 1950 Mad. 35.

(e) Cannanore Milk Supply Cooperative Society, In re (1956) 2 M.L.J. 465=1957 Cr. L.J. 75.

Inspectors appointed under the U. P. Act were conferred the powers to prosecute by the Act itself namely section 34. They did not derive this power under any rules. When Section 34 of the Act was repealed in view of the repeal of the entire Act, this power of the Food Inspectors came to an end. The notification appointing Health Officers and others to be Food Inspectors might serve the purpose of appointing them Food Inspectors under the Prevention of Food Adulteration Act, but it neither gave them the power to prosecute under the U. P. Act nor could it be deemed to confer the power under the Central Act. Hence, the prosecution was bad in law (f).

(10) Administrator under Sec. 554 of Bengal Municipal Act, whether local authority for sanctioning prosecution under Sec. 20 ?—An Administrator under Sec. 554 of the Bengal Municipal Act is not a local authority within the meaning of Sec. 2 (VIII) of the Prevention of Food Adulteration Act. In the case of Howrah Municipality the local authority must be the Municipal Commissioner of Howrah. There is nothing in the Central Act showing that the Administrator, when the Municipality is superseded comes within the term (local authority) as defined in the Act. The definition of local authority as contained in Section 2 (VIII) cannot be deemed to have been extended by the amendment of Sec. 554 by the West Bengal Act No. XXI of 1954. Sec. 554 as it originally stood did not authorise the Administrator to perform the powers and duties of the Chairman, under other laws, but only permitted him to perform the powers and duties under the Bengal Municipal Act itself, and the extension of the powers of the Administrator by the West Bengal Act No. XXI of 1954 not having received the assent of the President, it cannot be said that the powers of the Chairman under the Central Act can yet be exercised by the Administrator. Hence a prosecution, instituted upon the sanction of the Administrator is legally defective not being the sanction of the local authority and is bound to fail.(g)

11. Effect of withdrawal of complaint launched without valid sanction. No bar to subsequent complaint after obtaining valid Sanction Sec. 403 (Cr. P.C.) No bar :—A Verdict of acquittal is immune from challenge, but it is only when the accused has been tried and acquitted of an offence that the immunity arises. Therefore acquittal for want of proper sanction is no bar to fresh prosecution on the same facts and for the same offence(h).

(f) State Vs. Mool Chand A.I.R 1957 All. 343.

(g) Administrator Howrah Municipality Vs M/S Byron and Co. 1958 Cr. L.J. 169 (2) Cal.

(h) Bannerji Vs Bipan Behari Ghose—A.I.R. 1926 Cal. 691=43 C.L.J. 110=30 C.W.N. 382=27 Cr. L.J. 751=95 I.C. 79.

A prosecution launched without a valid sanction is nullity. Consequently where the first prosecution was launched under Sec. 12 U.P. Prevention of Adulteration Act, 1912 upon an invalid sanction, it was held that the prosecution was nullity and an order of acquittal passed under Sec. 248 Cr. P.C. when the complaint was allowed to be withdrawn could not be a bar to a subsequent complaint founded upon the same allegations and instituted upon proper sanction having been obtained under the provisions of law. Section 403 Cr. P.C. was no bar to subsequent prosecution(a).

(12) **Sanction for prosecution of a firm, whether amounts to sanction for prosecution of individual partners?**—Sanction given u/s 15, Bengal Food Adulteration Act for prosecution of a firm, does not amount to sanction for prosecution of any of the individual partners(b).

(13) **Absence of required complaint whether an irregularity curable u/s 537 Cr. P.C.?** Any irregularity created by an absence of complaint by Local Authority under Sec. 10 of the Behar and Orissa Prevention of Adulteration Act, 1919 in proceedings under the Act was held as cured by Sec. 537 Cr. P.C. (c)

(14) **Limitation for filing complaints under the Act:**—Prior to the enforcement of the Prevention of Food Adulteration Act, there were some Provincial Acts e.g. Section 19 of the Madras Prevention of Adulteration Act etc. which provided period of limitation for filing complaints. However, under the present Central Act of 1954 there is no period of limitation fixed and so a complaint can be filed at any time.

15. Some relevant judgments under Provincial Acts dealing with authority to launch prosecution:—1. A special officer is not the local authority under Sec. 21 (b) of the Behar Act (V of 1948). Consequently the Sanitary Inspector cannot be held to have had the power under Section 21 (b) to file the complaint merely because he was authorised by the special officer to file it. If the legislature had meant that the expression "Local Authority" as defined in Sec. 3 (e) (1) of the Behar Act should mean the person appointed as special officer under Sec. 386 of the Behar

(a) Girraj Kishore Vs. State—A.I.R. 1957 All. 129 (Bannerji Vs Bipan Behari Ghose A.I.R. 1926 Cal. 691; Yusufalli Mullah Vs The king A.I.R. 1949 P.C. 264=50 Cr. L.J. 889=53 C.W.N. 850=76 I.A. 158=62 M.L.W. 677=51 P.L.R. 405=(1949) 2 M.L.J. 461; Basdeo Aggarwal Vs. Emperor—A.J.R. 1945 F.C. 16=47 P.L.R. 50=49 C.W.N. (F.R.) 59=(1945) 1—M.L.J. 360=47 B.L.R. 391=1945 8 F.L.J. 45=1945 M.W.N. 423=80 C.L.J. 8=46 Cr. L.J. 510 Foll.)

(b) Labh Chand Chaggar Vs. Sanitary Inspector Salar—6 D.L.R. Cal. 98=5 A.I. Cr. D. 567.

(c) Sarup Lal Vs. Emperor—A.I.R. 1936 Pat. 636=8 B.R. 137=9 R.P. 264=17 P.L.T. 953=38 Cr. L.J. 192=(1936) Cr. C. 1067=166 I.C. 206.

Municipal Act, in a case where the Commissioners of a Municipality are superseded, they could have framed the definition accordingly. When the legislature has thus left clearly a gap, it is not at all in consonance with the canons of interpretation for the courts to fill in the gap and to say, that though the words municipal commissioners have been used, they must include the Special Officer appointed to exercise and perform their powers and duty under the Municipal Act (d).

(2) Under Sec. 21 (b) read with Section 3 (e) of the Behar Prevention of Food Adulteration Act, 1947 (5 of 1948), the complaint must be made by the Municipal Commissioners or by a person expressly authorised on this behalf by the Municipal Commissioners. Where the prosecution for an offence against the provisions of the Act was sanctioned by the Chairman only the sanction is wholly improper and the entire trial is vitiated (e).

(3) The expression "Local Authority" in Section 21 of the Behar Food Adulteration Act, 1947 (5 of 1948) means the Municipal Commissioners with reference to a Municipality. Therefore, where the Chairman is expressly authorised by the Municipal Commissioners he is competent to file the complaint under the Act (f).

(4) Where it was found that R was authorised to act u/s 14 (1) of the Behar Act (5 of 1948) by calling an ordinary meeting of the Municipal Commissioners u/s 43 (1) of the Behar and Orissa Municipal Act, the mere fact that in the notice the meeting had been described as a special meeting did not affect the question. The contention that there being no requisition by at least 3 members no special meeting could have been called by the Chairman was therefore untenable (g).

(5) Under Section 18 of the Madras Prevention of Food Adulteration Act a purchaser as well as any other person with the consent of the executive Officer can take action against any person who violates rule 28—E. A complaint filed by the Sanitary Inspector is therefore valid (h).

(6) The Chairman of the Municipal Board is competent to authorise the Medical Officer of Health to institute cases under the U. P. Prevention of Adulteration Act (i).

(d) Pursotam Dass Vs. The State—A.I.R. 1955 N. U. C 455 (Patna) (1951 2 All. E.R. 839 Ref.)

(e) Sheopat Dusadh Vs State—A.I.R. 1955 N.U.C. 1013 (Patna).

(f) Ganesh Shah Vs Chairman Deighar Municipality—A. I. R. 1955 N.U.C. 3993 (Patna) (A.I.R. 1955 N.U.C. 1013 Pat. Distt.)

(g) Do.

(h) Somisetti Pichiah In re—1954 Mad. W.N. 940=1954, 2 M.L.J (Andh.) 181.

(i) Municipal Board Brindaban Vs. State—1950 A.L.J 450=1950 A.W.R. 474.

(7) Any special officer appointed to administer the Municipality for a certain period in supersession of the powers of the Municipal Counsel and Chairman is not a Local Executive Officer within the meaning of Sec. 2 of the Madras Prevention of Adulteration Act 1918 (III of 1918) and a complaint instituted with the consent of such a special officer cannot be entertained (j).

(8) Inspector not authorised by proper authority—Conviction on such a complaint cannot stand. It is necessary that the Inspector would be authorised by the Director of Public Health for laying complaints and a conviction on a complaint without such authorisation cannot stand (k).

16. Notifications made by some states under Sec. 20 : -

(i) Punjab : See Notifications given under Section 9 under note No. 5.

(ii) U. P ; In Uttar Pradesh the State Government by Notification No. 10305/XVI (P. H)—461-52-dated 16 December 1955 published in the Uttar Pradesh Gazette dated December 24, 1955, Part I on Page 1848 has been pleased to authorise the following officers to institute or to give written consent for instituting prosecutions under the said Act in the areas noted against each :

- | | |
|---|---|
| 1. All Municipal Medical Officers of Health in Uttar Pradesh. | The municipal areas within their jurisdiction. |
| 2. All District Medical Officers of Health in Uttar Pradesh | The rural and urban areas within their jurisdiction, including municipal areas. |
| 3. Senior Medical Officers of the Cantonment Boards in Uttar Pradesh. | The Cantonment Area within their jurisdiction. |
| 4. Divisional Medical Officers of various Indian Railways within Uttar Pradesh. | Railway premises including Railway Colonies within their jurisdiction. |

SECTION 21

21 *Magistrate's power to impose enhanced penalties.* Notwithstanding anything contained in section 32 of the Code of Criminal Procedure, 1898 (Act V of 1898), it shall be lawful for any Presidency Magis-

(j) Public Prosecutor Vs Chinta Vankatarayadu—(1936) M.W.N. 210=43 L.W. 341=70 M.L.J. 503=8 R.M. 997=37 Cr. L.J. 627=A.I.R. 1936 Mad. 471=162 I.C. 425.

(k) Dhana Ram Ganga Ram Vs Municipal Committee D.I. Khan—A.I.R. 1935 Pesh. 24=7 R. Pesh. 88=36 Cr. L.J. 624=154 I.C. 873.

trate or any Magistrate of the first class to pass any sentence authorised by this Act, in excess of his powers under section 32 of the said Code.

SYNOPSIS

1. Section explained and analysed.
2. Section 32 Cr. P. C.

COMMENTARY

1. Section explained and analysed :—Under section 21 every Presidency Magistrate as well every Magistrate of the first class have been given enhanced powers to award sentences of fine and imprisonment in case of offences under the Act as provided in Section 16 of the Act not withstanding the provisions of Section 32 Cr. P. C.

2. Section 32 Cr. P. C :—For facility of reference the relevant portion of Section 32 is reproduced below :

32. Sentences which Magistrate may pass. (1) The courts of Magistrates may pass the following sentences namely :

- | | |
|---|--|
| (a) Courts of Presidency magistrates and of magistrates of the first class. | Imprisonment for a term not exceeding two years including such solitary confinement as is authorised by law :
Fine not exceeding two thousand rupees. Whipping. |
|---|--|

*Note:—*For offences under the Prevention of Food Adulteration Act no sentence of whipping is provided, though a bill No. 12 of 1958 to amend the provisions of the Prevention of Food Adulteration Act contains Section 3 which is reproduced below :

3. Insertion of Sec. 21 A. After Sec. 21 of the principal Act. the following section shall be inserted, namely—"21 A. Public flogging in certain cases. It shall be lawful for the trying court to inflict the punishment of public flogging if the offence is held to be deliberate or a persistent one."

SECTION 22

22. Protection of action taken in good faith. No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done under this Act.

SYNOPSIS

1. Section explained and analysed.
2. Object of this Section.
3. Good Faith.
4. A few judgments most relevant on the point of good faith.

COMMENTARY.

(1) **Section explained and analysed** :—Under this section no suit or criminal prosecution or any other legal proceedings can be instituted against any person for anything done by him under the Act provided he has done it or intended to be done in good faith.

(2) **Object of this Section** :—The object of this section is apparently to protect every person including food inspectors, public analysts, medical practitioners and all other officials who are authorised to act in pursuance of their functions and duties under this Act from being subjected to any Civil or Criminal action, provided they act in good faith or they intended to do so in good faith. Under section 10 (9) a food inspector exercising powers under this Act or the rules there under is made punishable with fine which may extend to rupees five hundred in case he commits any of the acts mentioned in clauses 9 (a) and (b) of section 10. Section 22 can save him only if he acts in good faith.

(3) **Good Faith** :—The words 'Good Faith' have not been defined in the Act. But these words have been defined in various enactments as mentioned below ;

(i) **Indian Penal Code Section 52—**

Section 52 "Good Faith"—Nothing is said to be done or believed in good faith which is done or believed without due care and attention.

(ii) **Indian Limitation Act (IX of 1908) Section 2 (7) "Good Faith"**—Nothing shall be deemed to be done in good faith which is not done with due care and attention.

(iii) **The General clauses Act (X of 1897) Section 3 (22)** A thing shall be deemed to be done in "good faith" where it is in fact done honestly, whether it is done negligently or not.

Good faith plays an important part in the law of crimes and its presence is ordinarily sufficient answer to a charge of criminality in many cases. The definition here given (I.P.C.) is therefore the key note of all sections in which good faith enters. The definition of good faith as given in I.P.C. is merely a negative one. It does not define good faith but rests content by stating what it is not. The positive aspect of the term is presented by the General Clauses Act. The definition in the General Clauses Act is the

verbation reproduction of the definition of the term as given in the English Bills of Exchange Act, 1882 and the sale of Goods Act, 1893. The I.P.C. defines good faith by exclusion only and makes no reference to moral elements of honesty and right motive which are involved in the popular significance of good faith.

4. A few judgments most relevant on the point of good faith :—(i) Good faith in criminal law is different from good faith as understood in civil law. If an act is not done with due care and attention, it cannot be said to be done in good faith as far as criminal law is concerned. Where the police acted without legal authority in arresting or effecting a search and even did not act in good faith as was required by law and their action was wholly without jurisdiction. It was held that the action of the police was such as to give rise to a right of private defence (a)

(ii) Section 52 of the I. P. C. makes no reference to the moral elements of honesty and right motive which are involved in the popular significance of good faith and which are predominant in the positive definition given in the General Clauses Act and other legislative enactments. While an honest blunderer acts in good faith within the meaning of the General Clauses Act, but he can never Act in good faith within the meaning of the Penal Code for being negligent. Good faith according to the Penal Code does not require logical infallibility but due care and caution which must in each case be considered with reference to the general circumstances, the capacity and intelligence of the person whose conduct is in question (b).

(iii) Negligence does not by itself show want of good faith where General clauses Act applies. It is only in the Penal Code that good faith requires due care and attention. Such requirement is not mentioned in the General Clauses Act (c).

(iv) Where an amin executes a warrant knowing full well that the date fixed for the execution of the warrant had expired it cannot be said that he was acting in good faith and the person whose property is sought to be attached has a right of private defence (d).

(a) Pagla Baba V. The State 23 Cut. L.T. 88= A.I.R. 1957 Orissa 130= 1957 Cr. L.J. 769.

(b) Ganapathia Pillai, In re, 66 Mad. L.W. 361=1953 Cr. L.J. 1730= A.I.R. 1953 Mad. 936.

(c) Gopal Chandra V Bep'in Behari A.I.R. 1955 Cal. 353.

(d) Raghubir V Emperor A.I.R. 1942 Oudh 57=1941 O.W.N. 1175=43 Cr. L.J. 60=1941 A.W.R. 334=17 Luck. 311=14 R.O. 249=196 I.C. 731.

(v) Absence of good faith within the meaning of the Indian Penal Code (Sections 52 and 79), means simply carelessness or negligence (e).

(vi) The phrase "due care and attention" implies genuine effort to reach the truth and not the ready acceptance of an ill-natured belief. When a question arises whether a person acted in good faith, then it devolves upon him to show not merely that he had a good intention, but that he exercised such care and skill as his duty reasonably demanded for its due discharge. Where the question is whether a public servant was justified in doing a certain thing, his justification must have a better foundation than his mere private belief, for a man may be very foolish in believing himself justified but the law cannot adopt so vague and unsafe a criterion (f).

(vii) A sub-inspector going to a village dressed up in uniform to arrest the accused. This will not justify the sub-inspector in saying that he was acting in good faith, when as a matter of fact he was acting in entire bad faith and in the most illegal and reprehensible manner (g).

SECTION 23

23 *Power of the Central Government to make rules.*

(I) The Central Government may, after consultation with the Committee and subject to condition of previous publication, make rules —

- (a) specifying the articles of food or classes of food for the import of which a licence is required and prescribing the form and conditions of such licence, the authority empowered to issue the same and the fees payable therefor ;
- (b) defining the standard of quality for, and fixing the limits of variability permissible in respect of, any articles of food ;
- (c) laying down special provisions for imposing rigorous control over the production, distribution and sale of any article or class

(e) *Bux Soo Meah Choudhury V. King* A.I.R. 1938 Rang. 350=11 R. Rang. 201=39 Cr. L.J. 983=178 I.C. 121.

(f) *Gaya Din V Emperor* 11 O.W.N. 337=A.I.R. 1934 Oudh 124=6 R.O. 448=35 Cr. L.J. 804=9 Luck. 517=148 I.C. 870.

(g) Do.

of articles of food which the Central Government may, by notification in the official Gazette, specify in this behalf including registration of the premises where they are manufactured, maintenance of the premises in a sanitary condition and maintenance of the healthy state of human beings associated with the production, distribution and sale of such article or class of articles ;

- (d) restricting the packing and labelling of any article of food and the design of any such package or label with a view to preventing the public or the purchaser being deceived or misled as to the character, quality or quantity of the article ;
- (e) defining the qualifications, powers and duties of food inspectors and public analysts ;
- (f) prohibiting the sale or defining the conditions of sale of any substance which may be injurious to health when used as food or restricting in any manner its use as an ingredient in the manufacture of any article of food or regulating by the issue of licences the manufacture or sale of any article of food ;
- (g) defining the conditions of sale or conditions for licence of sale of any article of food in the interest of public health ;
- (h) specifying the manner in which containers for samples of food purchased for analysis shall be sealed up or fastened up ;
- (i) specifying a list of permissible preservatives, other than common salt and sugar, which alone shall be used in preserved fruits, vegetables or their products or any other article of food as well as the maximum amount of

- each preservative ;
- (j) specifying the colouring matter and the maximum quantities thereof which may be used in any article of food :
- (k) providing for the exemption from this Act or of any requirements contained therein and subject to such conditions, if any, as may be specified, of any article or class of articles of food ;
- (l) prohibiting or regulating the manufacture, transport or sale of any article known to be used as an adulterant of food ;
- (m) prohibiting or regulating—
- (i) the addition of any water, or other dilutent or adulterant to any article of food ;
- (ii) the abstraction of any ingredient from any article of food ;
- (iii) the sale of any article of food to which such addition or from which such abstraction has been made or which has been otherwise artificially treated ;
- (iv) the mixing of two or more articles of food which are similar in nature or appearance :
- (n) providing for the destruction of such articles of food as are not in accordance with the provisions of this Act or of the rules made thereunder.

(2) All rules made by the Central Government under this Act shall, as soon as possible after they are made, be laid before both Houses of Parliament.

SYNOPSIS

- | | |
|---|--|
| 1. Rules framed by the Central Government. | 3 Essential requirements of the rules. |
| 2. Powers of the Central Government under Section 23. | 4 Whether the amended rule operates from the date of |

amendment or from the date when the original rule was framed ? and the statute.

6. Whether rules are part of the statute ?

5. Inconsistency between the rules

COMMENTARY

1. Rules framed by the Central Government :—These rules as amended upto date have been given in the appendices.

2. Powers of the Central Government under Section 23 :—The Central Government is empowered to make rules after consultation with the Committee and subject to the condition of previous publication on the subjects mentioned in clauses (a) to (n) and all such rules have to be laid before both the Houses of Parliament as soon as they are made

3. Essential requirements of the rules :—Under a corresponding provision section 19(1) (c) of the Bombay Prevention of Adulteration Act, 1925 it was held in a full bench case (a) that the sub-section permits the Government to frame a rule either with regard to the quantity of the deficiency in any of the normal constituents of an article or a rule with regard to the addition of extraneous matter in any article and in framing the rule it is open to Government either to specify the quantity of deficiency or the quantity of extraneous matter or to establish that there was any deficiency or that there was any addition of extraneous matter. It cannot be said that the rule framed under the said sub-section must specify both the deficiency in normal constituents and the addition of extraneous matter. In a similar case under the Bengal Food Adulteration Act, 1919 it was held that the essential thing is that the rules should refer to deficiencies in or additions to any article of food (b).

4. Whether the amended rule operates from the date of amendment or from the date when the original rule was framed :—Where sub-rule (3) of rule 1, under the Prevention of Food Adulteration Act was subsequently amended by notification S. R. O. 1202 of 10.5/56 published in Calcutta Gazette of 19-7-56, the amended rule must be deemed to have been in existence from the original making and publication of the rules (c) Rule 47 relating to labelling, occurs in Part VIII. Because rule 47 relates to labelling and Part VII also relates to labelling, it cannot be argued

(a) State V Ishwarlal Chhaganlal 1956 Cr. L. J. 195-58 Bom. L.R. 358=I.L.R. (1956) Bom. 535-A.I.R. 1956 Bom. 690 (F.B.) (I.L.R. (1954) Bom. 519=56 Bom. L.R. 128 over ruled).

(b) Nowranga Lal V Chairman Midnapore Municipalities A.I.R. 1940 Cal. 324-44 C.W.N. 615-I.L.R. (1940) 2 Cal. 8-190 I.C. 86=41 Cr. L.J. 849.

(c) Administrator Howrah Municipality V. Mis Byron and Co. 1953 Cr. L. J. 169 (2) Cal.

that rule 47 must be read with Part VII, The other provisions relating to the labelling of containers came into force on the 1st October, 1956, but this particular provision contained in rule 47 about Saccharin being declared on the label must be deemed to have come into force on the 24th September 1955 when Part VII came into force (d)

5. **Inconsistency between rules and the statute** :—In case of inconsistency between the two, the rules must give way (e).

6. **Whether rules are part of the statute** ?—When rules are framed under authority conferred by statute, they become part of the statute and have the same force (f) . .

SECTION 24

24. *Power of State Government to make rules.* (1) The State Government may, after consultation with the Committee and subject to the condition of previous publication, make rules for the purpose of giving effect to the provisions of this Act in matters not falling within the purview of Sec. 23.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may—

- (a) define the powers and duties of the Food (Health) authority and local authority and jurisdiction of food inspectors and public analysts ;
- (b) prescribe the forms of licences for the manufacture for sale, for the storage, for the sale and for the distribution of articles of food or any specified articles of food or class of articles of food, the form of application for such licences, the conditions subject to which such licences may be issued, the authority empo-

(d) Same as (c)

(e) Bijoy Krishna V The Regional Transport Authority 61 C.W.N. 590, Central Karnatak Motor Service V State of Mysore A.I.R. 1957 Mysore 7=I.L.R. (1956) Mysore 231. Ram Piara V M.C. Hoshiarpur 57 P.L.R. 1=A.I.R. 1955 Punjab 125.

(f) Ram Piara V M.C. Hoshiarpur 57 P.L.R. 1=A.I.R. 1955 Punjab 125 Khetsidas V Pratapmull A.I.R. 1946 Cal. 197=49 C.W.N. 595=1945-8 F.L.J. 205

wered to issue the same and the fees payable therefor ;

- (c) direct a fee to be paid for analysing any article of food or for any matter for which a fee may be prescribed under this Act ;
- (d) direct that the whole or any part of the fines imposed under this Act shall be paid to a local authority on realisation ;
- (e) provide for the delegation of the powers and functions conferred by this Act on the State Government or the Food (Health) Authority to subordinate authorities or to local authorities.

(3) All rules made by the State Governments under this Act shall, as soon as possible after they are made, be laid before the respective State Legislatures.

SYNOPSIS

1. Powers of the State Government under Section 24.

COMMENTARY

1. Powers of the State Government under Section 24 :—The State Government is empowered to make rules for the purpose of giving effect to the provisions of this Act only in matters not falling within the purview of Section 23 and in particular and without prejudice to the generality of the foregoing powers may make rules concerning matters detailed in clauses (a) to (c) of Section 4 (2). The said power of making rules is to be exercised only after consultation with the Committee and subject to the condition of previous publication. According to sub-section (3) the said rules have to be laid before the respective State Legislatures as soon as possible after they are made.

SECTION 25

25. Repeal and saving. (1) If, immediately before the commencement of this Act, there is in force in any State to which this Act extends any law corresponding to this Act, that corresponding law shall upon

such commencement stand repealed.

(2) Notwithstanding the repeal by this Act of any corresponding law all rules, regulations and by-laws relating to the prevention of adulteration of food, made under such corresponding law and in force immediately before the commencement of this Act shall, except where and so far as they are inconsistent with or repugnant to the provisions of this Act, continue in force until altered, amended or repealed by rules made under this Act.

SYNOPSIS

1. Section explained and analysed.
2. The General Clauses Act (X of 1897) Section 6 and its effect.
3. Whether Section 6 applies to temporary Legislation?
4. The saving clause saves the rules, but not the provisions of any repealed Act.

COMMENTARY

1. Section explained and analysed :—Section 25 (1) is a repealing clause and repeals from the date of the enforcement of this Act any law that was in force corresponding to this Act in any State to which this Act extends.

Section 25 (2) is a saving clause and according to this subsection, notwithstanding the repeal by this Act of any corresponding law, or rules, regulations, bye laws relating to the prevention of adulteration of food made under the previous corresponding law and in force immediately before the commencement of this Act shall continue in force, except where and to the extent they are inconsistent with or repugnant to the provisions of this Act until they are altered, amended or repealed by rules made under this Act.

2 The General Clauses Act (X of 1897) Section 6 and its effect :—Section 6 of Act No. X of 1897 runs as follows :—“Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not —

- (a) revive any thing in force or existing at the time at which the repeal takes effect ; or
- (b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder ; or

- (c) affect any right, privilege, obligation or liability acquired or accrued or incurred under any enactment so repealed ; or
- (d) affect any penalty, forfeiture or punishment in respect of any offence committed against any enactment so repealed or
- (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such investigation legal proceeding or remedy may be instituted, continued or enforced, any such penalty, forfeiture or punishment may be imposed as if the Repealing Act or Regulation had not been passed."

Section 6 of the General Clauses Act is a general saving clause and will govern all prosecutions and appeals in respect of transactions relating to offences committed before the enforcement of the Prevention of Food Adulteration Act. Whenever there is a repeal of an enactment the consequences laid down in Section 6 will follow unless, as the section itself says, a different intention appears. In the case of a simple repeal there is scarcely any room for expression of any contrary opinion. But when the repeal is followed by fresh legislation on the same subject the Court would undoubtedly look to the provisions of the new Act but only for the purpose of determining whether they indicate a different intention.

Section 6 is intended to apply only to those cases where there has been a simple repeal and not those of repeal and re-enactment. But where there has been re-enactment the legislature can make a provision in the new Act dealing with the matter. Section 6 is intended to apply only to those cases where the Legislature has either not given its thought to the matter of prosecuting old offenders or a provision dealing with the question has been accidentally omitted. But no such inadvertence can be assumed and if the new Act does not deal with the matter, it may be safely assumed that the legislature does not deem it fit to keep alive the liability incurred in respect of offences committed under the old Act (b). As a general principle as laid in Section 6(c) the repeal or amendment of the Act does not affect a right already in existence unless a contrary intention is made out expressly or by implication (c). Section 6 clearly provides that if any liability is incurred against any person, or if any investigation or legal proceeding is started against any person, such investigation or legal proceeding will be instituted, continued

(a) State of Punjab V Mohar Singh A.I.R. 1955 S.C. 84=1955 S.C.J. 25= (1955) 1 S.C.R. 893.

(b) State V Mohar Singh 54 P.L.R. 10 (S.N.) (1936 All. 3 Foll. 1951 Nag. 353 not Followed)

(c) Gursarandas V Parmeshwari Charan A.I.R. 1927 Pat. 203.

or enforced as if the Repealing Act or Regulation had not been passed. It cannot be stated as a broad proposition that section 6 is ruled out when there is repeal of enactment followed by fresh Legislation. Section 6 would be applicable to such cases also unless the new legislation manifests an intention incompatible with or contrary to the provisions of the section. Such incompatibility would have to be ascertained from all the relevant provisions of the new law (d).

3. Whether Section applies to temporary Legislation?—

The rule laid down in Section 6 (e) does not apply to temporary or expiring statutes which automatically lapse at a certain date or on the happening of a certain contingency without fresh legislation (e).

4. The Saving clause saves the rules, but not the provisions of any repealed Act :—Section 25 (2) of this Act saves all rules, regulations and bye laws relating to the Prevention of Adulteration of Food made prior to the coming into force of this Act and which were in force, in so far as they are not inconsistent with or repugnant to the provisions of this Act. The prior rules made under section 20 of the Madras Act 111 of 1918 must be considered to be in force under the Act till they are replaced by other rules (f).

Under Section 7 of the Madras Act 111 of 1918 the Executive Officer of a Panchayat Board was empowered to enter and inspect any place where articles of food were being manufactured or exposed for sale. But the Madras Act stood repealed the moment the Central Act (XXXVII of 1954) came into force. Consequently the local Executive Officers who were exercising powers by virtue of section 7 of the Madras Act ceased to have such powers. Now under the Central Act, Food Inspectors alone can exercise these powers. The saving clause contained in Section 25 (2) has no application to this case (g).

What is sought to be hit under old rule 37 (E) B under the Madras Prevention of Adulteration rules is that there should be no adulteration of the pure tea offered for sale by the admixture of colouring substance derived from coal tar. Hence, admixture of

(d) Indra Sohan Lal V Custodian of Evacuee Property Delhi 1956 S.C.J. 171=1956 S.C.A. 618=(1955) 2 S.C.R. 1117=A.I.R. 1956 S.C. 77 (S.C.) (A.I.R. 1955 S.C. 84=1955 S.C.J. 25 Rel. upon.)

(e) Karim Shah V Mst. Zinat Bibi A.I.R. 1941 Lah. 175 43 P.L.R. 103=195 I.C. 304=I.L.R. (1941) Lah. 773 (F.C.) Aubrey V K.M. Aubrey A.I.R. 1947 Lah. 414=49 P.L.R. 106 1931 All. 669 (F.B.), A.I.R. 1951 S.C. 301, 51 P.L.R. 10 (S.N.)

(f) Public Prosecutor V M.S. Palaniappan A.I.R. 1957 Mad. 736.

(g) M. Sambayya, In re 1953 Mad. L.J. (Cr.) 172=1958 Andh. L.T. 176=(1958) Andh. W.R. 158=A.I.R. 1958 Andh. Pra. 348.

tea dust with colouring matter derived from coal tar constitutes an adulteration which comes within the purview of Rule 37 (E) (B) (h).

Under Section 2 (f) of the Central Act an article of food shall be deemed to be adulterated only if any colouring matter other than that prescribed in respect thereof and in amounts not within the prescribed limits of variability is present in this article. In accordance with this provision rules have been framed and rule No. 28 of the Central Act has been framed. But on the date on which the seizure was made and prosecution was launched and conviction was recorded, this new rule 28 giving a category of the coal tar derivatives which could be used had not come into force. Therefore the old rule 37 (E) cannot be considered to be repugnant to rule 28. Consequently, it cannot be said that by reason of the coal tar derivative used in this case falling under one or more of the five categories mentioned in the new rule the accused would be saved (i).

In view of the provisions of U. P. Pure Food Act, 1950, which has repealed U. P. Prevention of Act 1912, a conviction under section 17 of the latter Act after the former came into force is not illegal (i).

Where the offence was committed after the commencement of the Central Act and prosecution was launched under Section 16 read with Section 7 of the Central Act by Assistant Medical Officer of Health prior to the enforcement of the rules made by the State Government under the Act. Held, that the State Government had not authorised the said Medical Officer by that date to prosecute any person for an offence under the Act and so he could not institute a complaint in view of Section 20 of the Act. The contention that by virtue of Section 25 (2) the power which the Medical Officers exercised under U. P. Pure Food Act and the rules made thereunder could be exercised by them under the Central Act was not tenable as the Food Inspectors under the U. P. Act were conferred powers to prosecute by the Act itself, namely section 34. They did not derive their powers under any rules. When Section 34 of the Act was repealed in view of the repeal of the entire Act the powers of Food Inspectors came to an end. The notification appointing Health Officers and others to be Food Inspectors might serve the purpose of appointing them Food Inspectors under the Prevention of Food Adulteration Act but it neither gave them the power to prosecute under the U. P. Pure Food Act nor could it be deemed to confer the power under the Central Act. Hence the prosecution was bad in law (j).

(h) *In re Abdul Salam* petitioner A.I.R. 1957 Mad. 268=1957 Cr. L.J. 517.

(i) *State V Lachmi Chand* A.I.R. 1957 All. 548.

(j) *State V Mool Chand* A.I.R. 1957 All. 343.

RULES

APPENDIX A

Prevention of Food Adulteration Rules

WITH LATEST AMENDMENTS

AS

Amended by notification No. PFA/F. 14—31 (B) /56—PH, & S. R. O., 1687, New Delhi dated 14th, July 1956, published in part II, Section 3 of Gazette of India, dated July 28, 1956 and notification No. S. R. O. 2755 dated November 20, 1956.

S. R. O. 2106—In exercise of the powers conferred by sub-section (2) of section 4 and sub-section (1) of section 23 of the Prevention of Food Adulteration Act, 1954 (37 of 1954), the Central Government, after consultation with the Central Committee for Food Standards hereby makes the following Rules, the same having been previously published as required by sub-section (1) of section 23 of the said Act, namely :

RULES

PART I—PRELIMINARY

1. Short title, extent and commencement :

- (1) These rules may be called the **PREVENTION OF FOOD ADULTERATION RULES, 1955.**
- (2) They extend to the whole of India except the State of Jammu and Kashmir.
- (3) These rules, other than those contained in Part III-Appendix 'B'—Item A. 12, Margarine, Part VI and Part VII shall come into force on the date of their publication in the Official Gazette, and the Rules shall come into force on the 1st day of June 1956 and the rules contained in Part III Appendix 'B'—Item A. 12 Margarine Part VI and Part VII shall come into force on the 1st day of December, 1956.

2. Definitions :— In these rules, unless the context otherwise requires—

- (a) 'Act' means the Prevention of Food Adulteration Act 1954 (37 of 1954)
- (b) 'Director' means the Director of the Laboratory.
- (c) 'Laboratory' means the Central Food Laboratory.

- (d) 'Form' means a Form set forth in Appendix A to these rules.

PART II—THE CENTRAL FOOD LABORATORY

3. Functions :— In addition to the functions entrusted to the Laboratory by the Act, the Laboratory shall carry out the following functions, namely—

- (a) analysis of samples of food sent by an officer or authority authorised by the Central Government for the purpose and submission of the certificate of analysis to the authorities concerned ;
- (b) investigations for the purpose of fixation of standards of any article of food ;
- (c) investigations in collaboration with the laboratories of Public Analysts in the various State for the purpose of standardizing methods of analysis.

4. Analysis of Food Samples :—

- (1) Samples of food for analysis whether under sub-section (2) of Section 13 of the Act or under clause (a) of rule 3 shall be sent either through a messenger or by registered post in a sealed packet, enclosed, together with a memorandum in Form I in an outer cover addressed to the Director.
- (2) The container as well as the outer covering of the packet shall be marked with a distinguishing number.
- (3) A copy of the memorandum and a specimen impression of the seal used to seal the container and the cover shall be sent separately by registered post to the Director.
- (4) On receipt of the packet, it shall be opened either by the Director or by an officer authorized in writing in that behalf by the Director, who shall record the condition of the seal on the container.
- (5) After test or analysis, the certificate thereof shall be supplied forthwith to the sender in form II
- (6) The fee payable in respect of such a certificate shall be Rs. 40/- per sample of food analysed. (a).
- (7) Certificates issued under these rules by the Laboratory shall be signed by the Director.

(a). Amended by notification No. S. R. O. 2755 dated Nov. 20-1956.

PART III—DEFINITIONS AND STANDARDS OF QUALITY

5. Standards of quality of the various articles of food specified in Appendix B to these rules are as defined in that appendix.

PART IV—PUBLIC ANALYSTS AND FOOD INSPECTORS

6. **Qualifications of Public Analysts :** A person shall not be qualified for appointment as Public Analyst unless he—

- (i) is a graduate with chemistry as one of the subjects, of a University recognised for this purpose by the State Government and has had not less than five years post-graduate experience in the analysis of food in a laboratory under the control of—
 - (a) a Public Analyst appointed under the Act, or
 - (b) a chemical examiner to Government, or
 - (c) a Fellow of the Royal Institute of Chemistry of Great Britain (Branch E), or
 - (d) the head of an institution specially approved for the purpose by the State Government ; or
- (ii) is an M.Sc. in chemistry, or holds a research degree on the subject of a University recognised for this purpose by the State Government, and has had not less than two years post-graduate experience in the analysis of articles of food under the control of—
 - (a) public analyst appointed under the Act, or
 - (b) a chemical examiner to Government, or
 - (c) a Fellow of the Royal Institute of Chemistry of Great Britain (Branch E), or
 - (d) the head of an institute specially approved for the purpose by the State Government; or
- (iii) is a graduate in medicine of a University recognized for the purpose by the State Government with a post-graduate qualification in Public Health and with experience in food analysis for at least five years ; or
- (iv) is a Fellow of the Royal Institute of Chemistry of Great Britain (Branch E) with at least one year's experience of food analysis in India :

Provided that for a period of four years from the commencement of the Act, persons whose qualifications, training and experience are regarded by the State Government as affording, subject to such further training, if any, as may be considered necessary, a reasonable

guarantee of adequate knowledge and competence may be appointed as Public Analysts.

7. Duties of Public Analyst:—(1) On receipt of a package containing a sample for analysis from a Food Inspector or any other person the Public Analyst or an Officer authorised by him shall compare the seals on the container and the outer cover with specimen impression received separately and shall note the condition of the seals thereon.

(2) The Public Analyst shall cause to be analysed such samples of articles of food as may be sent to him by Food Inspector or by any other person under the Act.

(3) After the analysis has been completed he shall forthwith supply to the person concerned a report in Form III of the result of such analysis.

8. Qualifications of a Food Inspector :—A person shall not be qualified for appointment as Food Inspector unless he—

- (i) is a medical officer in charge of the health administration of a local area, or
- (ii) is a graduate in medicine, or a licentiate in medicine, or
- (iii) is a holder of qualification in sanitary science registerable as an additional qualification by the State Medical Council, or Health Officers Examination certificate, or possesses qualifications prescribed by the respective State Governments for appointment of sanitary inspectors or health inspectors :

Provided that for a period of four years from the date on which the Act takes effect, persons whose qualifications, training and experience are regarded by the State Government as affording, subject to such further training, if any, as may be considered necessary, a reasonable guarantee of adequate knowledge and competence may be appointed as Food Inspectors.

9. Duties of Food Inspector :—It shall be the duty of the Food Inspector—

- (a) to inspect as frequently as may be prescribed by the Food (Health) Authority or the local authority all establishments licensed for the manufacture, storage or sale of an article of food within the area assigned to him;
- (b) to satisfy himself that the conditions of the licences are being observed;
- (c) to procure and send for analysis, if necessary, samples of any articles of food which he has reason to suspect

are being manufactured, stocked or sold or exhibited for sale in contravention of the provisions of the Act or rules thereunder ;

- (d) to investigate any complaint which may be made to him in writing in respect of any contravention of the provisions of the Act, or rules framed thereunder ;
- (e) to maintain a record of all inspections made, and action taken by him in the performance of his duties, including the taking of samples and the seizure of stocks, and to submit copies of such record to the health officer or the Food (Health) Authority as directed in this behalf ;
- (f) to make such enquiries and inspections as may be necessary to detect the manufacture, storage or sale of articles of food in contravention of the Act or rules framed thereunder ;
- (g) to stop any vehicle suspected to contain any food intended for sale or delivery for human consumption ;
- (h) when so authorised by the Health Officer having jurisdiction in the local area concerned or the Food (Health) Authority, to detain imported packages which he has reason to suspect contain food, the import or sale of which is prohibited ; and
- (i) to perform such other duties as may be entrusted to him by the Health Officer having jurisdiction in the local area concerned or the Food (Health) Authority.

10. Form of order not to dispose of stock:—Where the Food Inspector decides to keep under sub-section (4) of Section 10 of the Act in the safe custody of the vendor any stock of food which appears to him to be adulterated or misbranded, he shall after sealing the stock make an order to the vendor to that effect in Form IV; and the vendor shall comply with such order.

11. Form of receipt for food seized by a Food Inspector:—For every article of food seized and carried away by a food inspector under sub-section (4) of Section 10 of the Act, a receipt in Form V shall be given by the Food Inspector to the person from whom the article was seized.

12. Form of intimation of purpose of taking sample—Where a Food Inspector takes a sample of an article of food for the purpose of analysis, he shall intimate such purpose in writing in Form VI to the person from whom he takes the sample.

12 (a) Warranty:—Every trader selling an article of food to a vendor shall if the vendor so requires, deliver to the vendor a warranty in Form VI A.

Provided that no warranty in such form shall be necessary if the label on the article of food or the cash memo delivered by the trader to the vendor in respect of that article contains a warranty certifying that the food contained in the package or container or mentioned in the cash memo, is the same in nature, substance and quality as demanded by the vendor.

Explanation :—The term 'trader' shall mean an importer, manufacturer, wholesale dealer or an authorised agent of such importer, manufacturer or wholesale dealer (b).

13. Power of Food Inspector to deal with carriers of disease handling food :—(1) Where the Food Inspector is of the opinion that any person engaged in selling or manufacturing any article of food is suffering from or harbouring the germs of any infectious disease, he may examine or cause to be examined such person :

Provided that where such person is a female above the age of eight years she shall be examined by a woman duly authorized by the Food Inspector.

(2) If on such examination the Food Inspector finds that such person is suffering from any such disease, he may by order in writing direct such person not to take part in selling or manufacturing any article of food.

PART V—SEALING, FASTENING AND DESPATCH OF SAMPLES.

14. Manner of sending samples for analysis :—Samples of food for the purpose of analysis shall be taken in clean dry bottles or jars or in other suitable containers which shall be closed sufficiently tight to prevent leakage, evaporation or in the case of dry substance, entrance of moisture, and shall be carefully sealed.

15. Bottles or containers to be labelled and addressed :—All bottles or jars or other containers containing samples for analysis shall be properly labelled and the parcels shall be properly addressed. The label on any sample of food sent for analysis shall bear :—

- (a) Serial No.
- (b) Name of the sender with official designation, if any
- (c) Name of the vendor.
- (d) Date and place of collection.
- (e) Nature of article submitted for analysis.
- (f) Nature and quantity of preservative, if any, added to the sample.

16. Manner of packing and sealing the samples :— All samples of food sent for analysis shall be packed, fastened and sealed in the following manner, namely :—

- (a) The stopper shall first be securely fastened so as to prevent leakage of the contents in transit.
- (b) The bottle, jar or other container shall then be completely wrapped in fairly strong thick paper. The ends of the paper shall be neatly folded in and affixed by means of gum or other adhesive.
- (c) The paper cover shall be further secured by means of strong twine or thread both above and across the bottle, jar or other container, and the twine or thread shall then be fastened on the paper cover by means of sealing wax on which there shall be at least four distinct and clear impressions of the seal of the sender, of which one shall be at the top of the packet, one at the bottom and the other two on the body of the packet. The knots of the twine or thread shall be covered by means of sealing wax bearing the impression of the seal of the sender.

17. Containers of samples how to be sent to the Public Analyst:— The containers of samples for analysis shall be sent to the Public Analyst by registered post or railway parcel or air freight or by hand in sealed packet, enclosed together with a memorandum in Form VII in an outer cover addressed to the Public Analyst.

18. Memorandum and impression of seal to be sent separately by post:— A copy of the memorandum and a specimen impression of the seal used to seal the packet shall be sent to the Public Analyst separately by post.

19. Addition of preservatives to samples:— Any person taking a sample of any food for the purpose of analysis under the Act may add a preservative as may be prescribed from time to time, to the sample for the purpose of maintaining it a condition suitable for analysis.

20. Preservative in respect of milk-cream and gur:— The preservative used in the case of samples of any milk (including skimmed and separated milk, cream and gur in liquid or semi-liquid form shall be the liquid commonly known as "formalin" that is to say, a liquid containing about 40 per cent of formaldehyde in aqueous solution, in the proportion of one drop for one ounce of the sample.

21. Nature and quantity of the preservative to be noted on the label:— Whenever any preservative is added to a sample, the nature and quantity of the preservative added shall be clearly noted on the label to be affixed to the container.

22. Quantity of sample to be sent to the Public Analyst:— The quantity of sample of food to be sent to the Public Analyst Director for analysis shall be as specified below—

Articles of food			Approximate quantity to be supplied
1.	Milk.	...	8 oz.
2.	Ghee	...	4 oz.
3.	Butter	...	4 oz.
4.	Khoa	...	4 oz.
5.	Dahi	...	8 oz.
6.	Edible oils	...	4 oz.
7.	Edible fats	—	4 oz.
8.	Tea	...	4 oz.
9.	Atta	...	8 oz.
10.	Wheat flour	...	8 oz.
11.	Gur	...	8 oz.
12.	Cane sugar	...	8 oz.
13.	Honey	...	4 oz.
14.	Prepared food	—	16 oz.
15.	Aerated water	...	12 oz.
16.	Vanaspati (c)	...	16 oz.

PART—VI—COLOURING MATTER

23. Unauthorised Addition of colouring matter prohibited:—The addition of a colouring matter to any article of food except as specifically permitted by these rules, is prohibited.

24. Extraneous addition of colouring matter to be mentioned on the label:—Where an extraneous colouring matter has been added to any article of food there shall be written on the label attached to any package of food so coloured a statement in capital letters as below :

<p>ARTIFICIALLY COLOURED</p>

Provided that this rule shall not apply to cheese (all classes), ice-cream, mixed ice-cream, icing sugar and gelatine desserts.

25. Use of caramel permitted:—Notwithstanding provisions of rule 24 caramel may be used without label declaration.

(c). As added by notification No. S. R. O. 2755 dated the 20th Nov. 1956

26. **Natural colouring matter which may be used :—**The following natural colouring principles, whether isolated from natural colours or produced synthetically may be used in or upon any article of food ;

- | | |
|------------------------------|----------------------------------|
| (a) Cochineal or Carmine, | (f) Annatto. |
| (b) Carotin and Carotenoids. | (g) Ratanjot. |
| (c) Chlorophyll. | (h) Saffron. |
| (d) Lactoflavin. | (i) <u>Curcumin</u> (Haldi). (d) |
| (e) Caramel. | |

27. **Addition of inorganic matters and pigments prohibited :** Inorganic colouring matters and pigments shall not be added to any article of food.

28. **Coal Tar dyes which may be used (e):—**No Coal Tar dyes or a mixture thereof except the following shall be used in food :—

Colour	Common name	Colour index	Chemical class
1. Red	Ponceau*4 R	185	Azo.
	Carmoisine	179	Azo.
	Red 6 B	57	Azo.
	Red FB	225	Azo.
	Acid Magenta II	692	Triphenylmethane
	Fast Red E	182	Azo.
2. Yellow	Tartrazine	640	Pyrazolone
	†Sunset Yellow FCF	—	Azo.
3. Blue	Blue VRS	672	Triphenylmethane
	Indigo Carmine	1180	Indigoid.
4. Black	Brilliant Black BN	—	Bisazo.

† F.D. & C. No. 6

29. **Use of permitted coal tar dyes prohibited:—**Use of permitted coal tar dyes in or upon any food other than those enumerated below is prohibited :—

- Ice cream including mixed ice-cream.
- Dairy products except milk, dahi, butter, ghee, chhana, condensed milk, cream and baby foods.
- Smoked fish.
- Egg preparations.
- Biscuit, pastry, confectionary and sweets.

(d) Substituted by Notification No. 2755 dated 20th Nov. 1956,
(e) Ditto.

- (f) Fruit products.
- (g) Non alcoholic beverages except tea, cocoa and coffee.
- (h) Custard powder.
- (i) Jelly crystals.
- (j) Soup powder.
- (k) Luncheon or Pork Luncheon meat. (.)

30. Maximum limit of permitted colours :—The maximum limit of any permitted coal tar colours or mixture of permitted coal tar colours which may be added to any food shall not exceed 1.5 grains per pound of the final food or beverage for consumption. (g)

31. Colours to be pure :—The colours specified in rule 28 when used in the preparation of any article of food shall be pure and free from any harmful impurities.

32. Contents of the label :—Unless otherwise provided in these rules there shall be specified on every label :—

- (a) the name, trade name or description of food contained in the package ;
- (b) the name and business address of the manufacturer or importer or vendor or packer ;
- (c) where any permitted class II preservative and or colouring agent is added, a statement to the effect that it contains permitted class II preservatives and or permitted colouring agents ;
- (d) the net weight or number or measure of volume of contents as the circumstances may require except in the case of biscuits, confectionary and sweets where the weight may be expressed in terms of either average net weight and or minimum net weight ;
- (e) a batch number or code number either in Hindi or English numerals or alphabets or in combination.

Provided that in the case of food package weighing not more than 2 ounces, particulars including the statement under any clause need not be specified.

Provided further that in the case of :

- (a) aerated water containers ; and
- (b) a package containing more than 2 ounces but not more than 4 ounces of biscuits ; confectionary and sweets, particulars under clauses (d) and (e) need not be specified.

(f) Substituted by Notification No. 2755 dated 20th Nov. 1956.

(g) —Ditto

Explanation : The term 'label' means a display of written, printed perforated stencilled, embossed or stamped matter upon the container of any food package. (h)

33. Languages, of the particulars or declaration of the label : The particulars or declaration required under these rules to be specified on the label shall be in English or Hindi in Devanagari script.

Provided that nothing herein contained shall prevent the use of any other language in addition to the language required under this rule. (i)

34 Declaration to be surrounded by lines : There shall be a surrounding line enclosing the declaration and where the words "unfit for babies" are required to be used there shall be another such line enclosing these words.

35. Distance of surrounding line :—The distance between any part of the words 'unfit for babies' and the surrounding line enclosing these words shall not be less than one-sixteenth of an inch.

36. Size of the types used for declaration : - The type used for the declaration shall not in any part, be less than one-eighth of an inch in height.

Provided that where the size of the package does not permit use of a type of one-eighth of an inch, letters of proportionately reduced size may be used.

Provided further that the types used for the words "unfit for babies" shall not be less than twice the height of any part of the declaration.

37. Labels not to contain false or misleading statements ; A label shall not contain any statement, claim, design, device, fancy name or abbreviation which is false or misleading in any particular concerning the food contained in the package or concerning the quantity or the nutritive value or in relation to the place of origin of the said food.

Provided that this rule shall not apply in respect of established trade or fancy names of confectionery, biscuits and sweets such as barley sugar, bulls eye, cream cracker, or in respect of aerated waters such as ginger beer or gold spot or any other name in existence in international trade practice. (j)

(h) Substituted by notification No. 2755 dated 20th Nov. 1956

(i) and (j).—Ditto.

38. Labels not to contain reference to Act or rules contradictory to required particulars : The label shall not contain any reference to the Act or any of these rules or any comment, on or reference to, or explanation of any particulars or declaration required by the Act or any of these rules to be included in the label which directly or by implication, contradicts, qualifies or modifies such particulars or declaration.

39. Labels not to use words implying recommendation by medical profession ; There shall not appear in the label of any package containing food for sale the words "recommended by the medical profession" or any words which imply or suggest that the food is recommended, prescribed, or approved by medical practitioners.

40. (1) Unauthorised use of words showing imitation prohibited :— There shall not be written in the statement or label attached to any package containing any article of food the word 'imitation' or any word or words implying that the article is a substitute for any food, unless the use of the said word or words is specifically permitted under these Rules.

(2) Any beverage which does not contain at least ten per centum of fruit juice by weight in its composition shall not be described as a fruit syrup, fruit juice squash or cordial or crush and shall be described as a synthetic syrup. Every synthetic syrup shall be clearly and conspicuously marked on the label as a 'SYNTHETIC' product, and no container containing such product shall have a label, whether attached thereto or printed on the wrapper of such container, or otherwise, which may lead the consumer into believing that it is a fruit product, neither the word "Fruit" shall be used in describing such a product, nor shall it be sold under the cover of a label which carries picture of any fruit. (k) Aerated water containing no fruit juice or pulp cannot have a label which leads the consumer into believing that it is a fruit product.

41. Imitations not to be marked pure:—The word "pure" or any word or words of the same significance shall not be included in the label of a package that contains an imitation of any food.

42. Form of labels—(A) Coffee Chicory Mixture—(i) Every package containing a mixture of coffee and chicory shall have affixed to it a label upon which shall be printed the following declaration. (l)

(k) Added by notification No. 2755 dated 20th Nov. 1956.

(l) Sub rule (ii) and (iii) deleted by notification No. 2755. Dated 20th Nov. 1956.

Coffee blended with chicory	
This mixture contains :	
Coffee	per cent
Chicory	per cent

(ii)

(iii)

(B) *Condensed Milk or Desiccated (Dried) Milk* :—(i) Every package containing condensed milk or desiccated (dried) milk shall bear a label upon which is printed such one of the following declarations as may be applicable or such other declaration substantitally to the like effect as may be allowed by the State Government.

(a) In the case of condensed full cream milk (Unsweetened)

<p>CONDENSED FULL CREAM MILK</p> <p>(UNSWEETENED)</p> <p>This tin contains the equivalent of</p> <p>(x)... pints milk</p>

(b) In the case of condensed full cream milk (Sweetened)

<p>CONDENSED FULL CREAM MILK</p> <p>SWEETENED</p> <p>This tin contains the equivalent of (x).....pints of milk, with sugar added.</p>

Note:—No. (ii) and (iii) omitted by Notification No. 2755 dated 20th Nov. 1956.

(c) In the case of condensed skimmed milk (unsweetened)

CONDENSED MACHINE-SKIMMED MILK
OR
CONDENSED SKIMMED MILK
(UNSWEETENED)

UNFIT FOR BABIES

This tin contains the equivalent of (x) ... pints
of milk

(d) In the case of condensed skimmed milk (Sweetened)

CONDENSED MACHINE-SKIMMED MILK
OR
CONDENSED SKIMMED MILK
(Sweetened)

UNFIT FOR BABIES

This tin contains the equivalent of (x) pints
of milk with sugar added

(e) In the case desiccated (dried) full cream milk :

DRIED FULL CREAM MILK

This tin contains the equivalent of (x)pints
of milk

(f) In the case of desiccated (dried) partly skimmed milk.

DESICCATED (DRIED) PARTLY SKIMMED MILK

Should not be used for babies
EXCEPT under medical advice

This tin contains the equivalent of
(x) pints of milk

(g) In the case of desiccated (dried) milk :

DESICCATED (DRIED) SKIMMED MILK

UNFIT FOR BABIES

This tin contains the equivalent of (x) — — —
pints of skimmed milk

(ii) The declaration shall in each case be completed by inserting at (x) the appropriate number in words and in figures, for example, 'one and half ($1\frac{1}{2}$)', any fraction being expressed as eighth, quarters or a half as the case may be. For the purpose of deciding the equivalent of pints of milk or skimmed milk under these rules, 'milk' means milk which contains not less than 12·4% of total milk solids (including not less than 3·6 per cent of milk fat) and 'skimmed milk' means milk which contains not less than 9 per cent of milk solids other than milk fat.

(iii) There shall not be placed on any package containing condensed milk or desiccated (dried) milk any comment on, explanation of, or reference to either the statement of equivalence, contained in the prescribed declaration or on the words 'Machine skimmed'; 'skimmed' or 'unfit for babies' except instruction as to dilution as follows—

"To make a fluid not below the composition of fresh milk or skimmed milk (as the case may be) with the con-

tents of this package, add (here insert the number of parts) of water by volume to one part by volume of this condensed (dried) milk."

(iv) Wherever the word 'milk' appears on the label of a package of condensed skimmed milk or desiccated (dried) skimmed milk as the description or part of the description of the contents, it shall be immediately preceded or followed by the word 'machine skimmed' or 'skimmed' or 'partly skimmed' as the case may be.

(C) *Ice-cream* :—Every dealer in ice-cream or mixed ice-cream who, in the street or other place of public resort, sells or offers or exposes for sale, ice-cream or ice-candy from a stall or from a cart, barrow or other vehicle, or from a basket, phial, tray or other container used without a stall or a vehicle, shall have his name and address along with the name and address of the manufacturer if any, legibly and conspicuously displayed on the stall, vehicle or container, as the case may be

43. Notice of addition, admixture or deficiency in food :—

(1) Every advertisement and every price or trade list or label for an article of food which contains an addition, admixture or deficiency shall describe the food as containing such addition, admixture or deficiency and shall also specify the nature and quantity of such addition, admixture or deficiency. No such advertisement or price or trade list or label attached to the container of the food shall contain any words which might imply that the food is pure.

(2) Every package, containing a food which is not pure by reason of any addition, admixture or deficiency shall be labelled with an adhesive label, which shall have the following declaration—

DECLARATION

This (a)..... contains an admixture/addition of not more than (b) per cent of international units of (c)..... — — — per ounce. (m)

(a) Here insert the name of food.

(b) Here insert the quantity of admixture which may be present.

(c) Here insert the name of the admixture or the name of the ingredient which is deficient.

(m) Substituted by Notification No. 2755 dated 20th Nov. 1956.

Where the context demands it, the words 'contains an admixture of' shall be replaced by the words 'contains an addition of or 'is deficient in'.

(3) Unless the vendor of a food containing an addition, admixture or deficiency, has reason to believe that the purchaser is able to read and understand the declaratory label he shall give the purchaser, if asked, the information contained in the declaratory label by word of mouth at the time of sale.

(4) Nothing contained in this rule shall be deemed to authorise any person to sell any article of food required under the Act or these rules to be sold in pure condition, otherwise than in its pure condition

(5) Nothing contained in this rule shall apply in the case of sweets, confectionary, biscuits, bakery products, processed fruits, aerated water and vegetables (n).

PART VIII—PROHIBITION AND REGULATING OF SALES

44. Sale of certain admixtures prohibited :—Notwithstanding the provisions of rule 43 no person shall either by himself or by any servant or agent sell—

- (a) cream which has not been prepared from milk or which contains less than 23 per cent of milk fat (o).
- (b) milk which contains any added water.
- (c) ghee which contains any added matter not exclusively derived from milk fat.
- (d) skimmed milk (fat abstracted) as milk,
- (e) a mixture of two or more edible oils as an edible oil,
- (f) vanaspati to which ghee has been added.
- (g) any article of food which contains any artificial sweetener except saccharin, or in the preparation of which any such artificial sweetener has been used. (p).
- (h) turmeric containing any foreign substance.
- (i) mixture of coffee and any other substance except chicory (q).

45. Food resembling but not pure honey not to be marked honey :—No person shall use the word honey or any word, mark, illustration, or device that suggests honey on the label or any

(n) Added by notification No. 2755 dated 20th Nov. 1956.

(o) For 40 per cent the figure 23 per cent substituted by notification No. S. R. O. 2755 dated the 20th the Nov. 1956.

(p) Substituted by notification No. 2755 dated 20th Nov. 1956.

(q) Added by " " " " " "

package of, or in any advertisement for, any food that resembles honey but is not pure honey.

46. Sale or use for sale of admixtures of ghee or butter prohibited :—No person shall sell or have in his possession for the purpose of sale or for use as an ingredient in the preparation of an article of food for sale a mixture of ghee or butter and any substance (a) prepared in imitation of or as a substitute for ghee or butter, or (b) consisting of or containing any oil or fat which does not conform to the definition of ghee :

Provided where a mixture prohibited by this rule is required for the preparation of an article of food such mixture shall be made only at the time of the preparation of such article of food.

47. Addition of Saccharin to be mentioned on the label :—Saccharin may be added to any food if the container of such food is labelled with an adhesive declaratory label, which shall be in form given below ;

“This.....contains an admixture of saccharin,”(r).
(name of the food)

48. Use of flesh of naturally dead animals or fowls prohibited :—No person shall sell or use as an ingredient in the preparation of any article of food intended for sale, the flesh of any animal or fowl which has died on account of natural causes.

48 A. Sale of permitted food colours :—

(i) No person shall sell coal tar dyes, or their mixtures or any preparation of such colours for use in or upon food, except **under a licence**.

(ii) No person shall sell a permitted coal tar dye for use in or upon food unless its container carries a label stating the following particulars :—

(a) the words ‘food Colours’.

(b) the chemical and the common or commercial name of the dyestuff.

(iii) No person shall sell a mixture of permitted coal tar dyes for use in or upon food unless its container carries a label stating the following particulars :—

(a) the words ‘Food Colour Mixture’.

(b) the chemical and the common or commercial name of the dyestuffs contained in the mixture.

(iv) No person shall sell a preparation of permitted coal tar dyes for use in or upon food unless its container carries a

(r). Added by notification No. 2755 dated 20th Nov. 1956.

label stating the following particulars :—

- (a) the words 'Food Colour Preparation'.
- (b) the name of the various ingredients used in the preparation (s)

PART IX—CONDITIONS FOR SALE AND LICENCE

49. Conditions for sale :—

- (1) Every utensil or container used for manufacturing, preparing or containing any food or ingredient of food intended for sale shall be kept at all times in good order and repair and in a clean and sanitary condition. No such utensil or container shall be used for any other purpose.
- (2) No person shall use for manufacturing, preparing or storing any food or ingredient of food intended for sale, any utensil or container which is imperfectly enamelled or imperfectly tinned or which is made of such materials or is in such a state as to be likely to injure such food or render it noxious.
- (3) Every utensil or container containing any food or ingredient of food intended for sale shall at all time be either provided with a tightfitting cover or kept closed or covered by a properly fitting lid or by a close fitting cover or gauze net or other material of a texture sufficiently fine to protect the food completely from dust, dirt and flies and other insects.
- (4) No utensil or cotainer used for the manufacture or preparation of, or containing any food or ingredient of food intended for sale shall be kept in any place in which such utensil or container is likely by reason of impure air or dust or any offensive, noxious or deleterious gas or substance or any noxious or injurious emanations, exhalation, or effluvium, to be contaminated and thereby render the food noxious.
- (5) A utensil or container made of the following materials or metal, when used in the preparation of food shall be deemed to render it unfit for human consumption :
 - (i) containers which are rusty ;
 - (ii) enamelled containers which have become chipped and rusty ;
 - (iii) copper or brass containers which are not properly tinned ; and
 - (iv) containers made of aluminium containing an admixture of lead.

(s). Proviso added by Notification No. 2755 dated 20th November, 1956

Provided that utensils or containers made of copper or brass which are not properly tinned may be used in the preparation of sugar or confectionary and mere use of such utensils or containers shall not be deemed to render sugar or confectionary unfit for human consumption. (t)

50. Conditions for Licence.—(1) No person shall manufacture, sell, stock, distribute or exhibit for sale any of the following articles of food except under a licence—

(a) milk or skimmed milk or separated milk. (b) milk products, including khoa, cream, rabri, dahi, etc (c) ghee, (d) butter (e) charbi. (f) edible oils, (h) sweetmeats and savoury, (u) (i) aerated water, (j) articles made out of flour including biscuits and other bakery products, or (k) any other article of food except fruit products covered under the Fruit products Order, 1955 and vegetable oil products or vānaspati, manufactured, stocked, sold or distributed by factories licensed for the purpose v), which the State Government by notification specify.

(2) The State Government or the local authority shall appoint licensing authorities.

(3) A licensing authority may with the approval of the State Government or the local authority by an order in writing delegate the power to sign licences and such other powers as may be specified in the order to any other person under his control.

(4) If articles of food are manufactured, stored or exhibited for sale at more than one place, separate application shall be made, and a separate license shall be issued, in respect of each such place :

Provided that this shall not apply to itinerant vendors who have no specified place of business and who will be licensed to conduct business in a particular area within the jurisdiction of the licensing authority.

(5) Before granting a licence for manufacture, stock or exhibition of any of the articles of food in respect of which a licence is required, the licensing authority shall inspect the premises and satisfy itself that it is free from sanitary defects. The applicant for the license shall have to make such alteration in the premises as may be required by the licensing authority for the grant of licence. (w)

(7) Proprietors of hotels and restaurants who sell or expose for sale savouries, sweets or other articles of food shall put up a notice board containing separate lists of the articles which have

(t) Proviso added by notification No. 2755 dated 20th Nov. 1956

(u) Old item no. (g) relating to waste ghee omitted by notification No. 2755 dated 20th Nov. 1956.

(v) Substituted by notification No. S R.O. 2755 dated the 20th Nov. 1956.

(w) No. 6 has been omitted by above notification.

been cooked in ghee, edible oil, hydrogenated vegetable oils and other facts for the information of the intending purchasers.

(8) Oils which are declared as not intended for human consumption or have been denatured, shall not be manufactured, stored or sold in the same premises where edible oils are manufactured, stored or sold.

(9) No licensee shall employ in his work any person who is suffering from infectious, contagious or loathsome disease.

(10) No person shall manufacture, store or expose for sale or permit the sale of any article of food in any premises not effectively separated to the satisfaction of the licensing authority from any privy, urinal, sullage, drain or place or storage of foul and waste matter.

(11) All vessels used for the storage or manufacture of the articles intended for sale shall have proper covers to avoid contamination.

(12) Every manufacturer (including Ghani Operator (x) or wholesale dealer in butter, ghee, hydrogenated vegetable oils, edible oils, and other fats shall maintain a register showing the quantity manufactured, received or sold and the destination of each consignment of the substances sent out from his manufactory or place of business, and shall present such register for inspection whenever required to do so by the licensing authority.

(13) An itinerant vendor granted a licence under these rules shall carry a metallic badge showing clearly the licence number and the nature of the article for the sale of which the licence has been granted.

(14) The nature of articles of food for the sale of which a licence is required under these rules shall be mentioned in the application for licence. Any objectionable, ambiguous or misleading trade name shall not be approved by the licensing authority.

(15) Every licensee who sells any food, shall display a notice board containing the nature of the articles which he is exposing or offering for sale.

51. Duration of licences :—A licence shall, unless sooner suspended or cancelled be in force for such period as the State Government may prescribe.

Provided that if application for a fresh licence is made before the expiry of the period of validity of the licence, the licence shall continue to be in force until orders are passed on the application.

(x) Added by notification No. 2755 dated 20th November, 1956.

PART X—PRESERVATIVES (y).

52. Definition of Preservative :—Preservative means a substance which when added to food, is capable of inhibiting, retarding or arresting the process of fermentation, acidification, or other decomposition of food.

53. Classification of Preservatives :—Preservatives shall be divided into following classes :—

(i) Class I Preservative shall be

(a) Common salt, (b) Sugar, (c) Dextrose, (d) Glucose, (e) Wood smoke, (f) Spices, (g) Vinegar or acetic acid, (h) Honey, (i) Hops, (j) Commercial Salt petre, and (k) Alcohol or potable spirits.

Addition of Class I Preservatives in any food in any proportion is not restricted.

(ii) Class II Preservative shall be

(a) Benzoic acid including salts thereof (b) Sulphurous acid including salts thereof, and (c) Nitrites of Sodium or Potassium in respect of food like ham, pickled meat,

54. Use of more than one Class II Preservative prohibited:—No person shall use in or upon a food more than one Class II Preservative.

55. Use of Class II Preservatives is restricted :—The use of Class II Preservatives shall be restricted to the following group of foods in concentration not exceeding the proportions given below against each :—

Article of Food	Preservative	Parts per million
1	2	3
1. Sausages and sausage meat containing raw meat, cereals and condiments ...	Sulphur dioxide	450
2. Fruit, fruit pulp or juice (not dried) for conversion into jam or crystallized glaze or cured fruit or other products :		
(a) Cherries	Sulphur dioxide	3,000
(b) Strawberries & raspberries ...	-do-	2,000
(c) Other fruits ...	-do-	1,000
3. Fruit juice concentrate ...	-do-	1,500

(y) Now chapter X added by notification No. P.F.A. 14-31 (B)/56—PH Govt. of India dated 14th July, 1956. Publication date 28th July 1956.

Article of Food	Preservative	Parts per million
1	2	3
4. Dried fruits :		
(a) Apricots, peaches, apples, pears and other fruits ..	Sulphur dioxide	2,000
(b) Raisins and sultanas ..	-do-	750
5. Other non-alcoholic wines, cordials, fruit juices, and beverages sweetened and unsweetened. ..	Sulphur dioxide or Benzoic acid	350 600
6. Jam, Marmalade, preserve, canned cherry and fruit jelly ...	Sulphur dioxide or Benzoic acid	40 200
7. Crystallised glace or cured fruit (in- cluding candied peel)	Sulphur dioxide	150
8. Fruit and fruit pulp not otherwise specified in this schedule.	-do-	350
9. Sugar, Glucose, Gur and Khandsari ..	-do-	70
10. Corn-flour and such like starches ...	-do-	100
11. Corn syrup ...	-do-	450
12. Gelatine ...	-do-	350
13. Beer ..	-do-	70
14. Cider ...	-do-	200
15. Alcoholic wines -	-do-	450
16. Sweetened mineral water ...	Sulphur dioxide or Benzoic acid	70 120
17. Brewed ginger beer ..	Benzoic acid	120
18. Coffee extract ...	-do-	450
19. Pickles and chutney made from fruit or vegetables ...	-do-	250
20. Tomato and other sauces	-do-	750
21. Cooked pickled meat including ham and bacon ..	Sodium or pot- assium nitrite	Not more than 200 p.p.m. (cal- culated as sodium nitrite)
22. Danish tinned caviar ...	Benzoic acid	50
23. Dehydrated vegetables ...	Sulphur dioxide	2,000
24. Tomato puree and paste ...	Benzoic acid	250
25. Syrups and sherbats ...	Sulphur dioxide or Benzoic acid	600
26. Dried Ginger ...	Sulphur dioxide	2,000

56. Container of food which contains preservative not to be marked "pure" : The word 'Pure' shall not be used on the label of the container of any food which contains preservative.

APPENDIX A

FORM I

[See rule 4 (1)]

(Memorandum to the Director, Central Food Laboratory)

From

.....

To

The Director,
 Central Food Laboratory,

.....

No.

Dated, the

19

MEMORANDUM

I send herewith, under the provisions of Section 13 (2) of the Prevention of Food Adulteration Act, 1954, sample (s) of a food purporting to be..... for test or analysis and request that a report on the result of the test or analysis may be supplied to this Court.

1. Distinguishing No. on the container and outer covering...
2. Particulars of offence alleged
3. Matter on which opinion required.....A fee of Rs.....
 has been deposited in Court.

Magistrate 1st Class/Presidency Magistrate.

APPENDIX A—contd.

FORM II

[See rule 4 (5)]

(Certificate of test or analysis by the Central Food Laboratory)

Certified that the sample (s), bearing number.....
 purporting to be a sample/samples of.....
 received on.....with Memorandum No.....
 dated.....from... has/have been tested/analysed and that
 the result/results of such test (s)/analysis is/are stated below.

.....

2. The condition of the seals on container and the outer covering on receipt was as follows :

.....

Director,
 Central Food Laboratory.....

PLACE :

DATE :

If opinion is required on any other matter, suitable paragraph(s) may be added.

FORM III

[See rule 7 (3)]

Report by the Public Analyst

Report No.....

I hereby certify that I,
Public Analyst for.....
duly appointed under the provisions of
 the Prevention of Food Adulteration Act, 1954, received on the.....
 day of19.....
 from
 a sample of

for analysis, properly sealed and fastened, and that I found the seal intact and unbroken.

I further certify that I have analysed the aforementioned sample, and declare the result of my analysis to be as follows :

.....

 and am of the opinion that.....

.....

 Signed this.....day
 of.....19.....

(Signature)
 Public Analyst.

Address.....

FORM IV

[See rule 10)

Whereas (Here give the name of article of food).....
 intended for food which is in your possession appears to me to be
 adulterated/misbranded.

Now therefore under sub-section (4) of Section 10 of the
 Prevention of Food Adulteration Act, 1954, (37 of 1954), I hereby
 direct you to keep in your safe custody the said sealed stock subject
 to such orders as may be issued subsequently in relation thereto.

Food Inspector,
 Area.....

PLACE :

DATE :

FORM V

[See rule II]

The stock of articles of food detailed below has this day
 been seized by me under the provisions of sub-section (4) of Section

10 of the Prevention of Food Adulteration Act, 1954, (37 of 1954),
from the premises of.....

..... situated at
.....

Details of Article of Food Seized

Date :

Food Inspector

Area.....

FORM VI
[See rule 12]

To

.....
.....
.....

I have this day taken from the premises of.....
situated at — ... samples of the
food specified below to have the same analysed by the Public Analyst
for.....

Details of food

Food Inspector,

Area.....

PLACE ;

DATE :

FORM VIA (b)

(See rule 12A)

Form of Warranty

Invoice No

Place.....

From.....

Date.....

To

.....
.....
.....

Date of sale	Nature or quality of article	Quantity	Price
1	2	3	4

I/We hereby certify that food/foods mentioned in this invoice is/are warranted to be same in nature, substance and quality as that demanded by the vendor.

Signature of trader/traders.

FORM VII

[See rule 17]

Memorandum to Public Analyst

From

.....

To

The Public Analyst,

.....

Dated the.....19...

No.

MEMORANDUM

The sample described below is sent herewith for analysis under clause (b) of sub-section (1) of Section 10 and/or clause (c) (ii) of sub-section (1) of Section 11 of the Prevention of Food Adulteration Act, 1954.

1. Serial No. of the sample :

2. Name of the vendor :
3. Date and place of collection :
4. Nature of article submitted for analysis :
5. Nature and quantity of preservative, if any, added to the sample.

2, A copy of this memo, and a specimen impression of the seal used to seal the packet of sample is being sent separately by post by hand(c).

Food Inspector,
Area

APPENDIX B

(See Rule 5)

Definitions and Standards of Quality

A.01. Beverages-Non-alcoholic

A.01.01 Aerated water, other than soda water, means potable water sweetened with sugar impregnated with carbon dioxide or oxygen or with both, under pressure, with or without admixture of salts of sodium, magnesium or calcium, singly or in combination with or without Citric Acid and of the permitted flavouring and colouring substances, if any, and shall not contain tartaric acid or phosphoric acid or other mineral acid or any lead or other poisonous metal, or any other added substance.

Aerated water shall be deemed to be below the standard of purity if it is manufactured from water which is unfit for drinking purposes or if ice manufactured from such water is inserted in it.

A.01.02. Soda water shall be potable water impregnated with carbon dioxide or oxygen or with both, under pressure with or without admixture of salts of sodium, magnesium or calcium, singly or in combination, and shall not contain any lead or other poisonous metal or any other added substance.

Soda water shall be deemed to be below the standard of purity if it is manufactured from water which is unfit for drinking purposes or if ice manufactured from such water is inserted in it.

A.02. Baking Powder means a combination capable, under conditions of baking, of yielding carbondioxide, and consists of sodium bicarbonate, and acid reacting material, starch or other neutral material.

The acid-reacting material of baking powder shall be—

(c) Word registered in para (2) deleted by notification No. 2755 dated the 20th Nov. 1956.

- (a) tartaric acid or its salts, or both (b) acid salts of phosphoric acid. (c) acid compounds or aluminium, or (d) any combination of foregoing.

When tested, baking powder shall yield not less than 10 per cent of its weight of carbon dioxide.

A.03. Starchy Food.

“A.03.01. Arrow Root means the separated & purified starch from the rhizomes of the plants known as *Maranta arundinacea* or from *Curuma augusifolia*. (a)

A.03.02. Tapioca globules known as Tapioca sago or Sabudana means the edible starchy product of the roots of the tapioca plant (*Manihot utilissima*) and shall be free from lime, tale or any other non-starchy foreign ingredients.

“A.04. Asafoetida or Hing means the Oleo-gum-resin obtained from the rhizome and root of *Ferula rubricaulis* and other species of *Ferula*. It shall contain no sand, gravel or other foreign mineral matter, colophony resin galbonum resin, ammoniacum resin or any other foreign resin. The ash content shall not exceed 15 per cent of its weight and the alcoholic extract (with 90 per cent alcohol) shall be not less than 25 per cent.

Compounded Asafoetida or Bhandani Hing is composed of one or more varieties of Asafoetida (Irani and or Pathani Hing) gum arabic and wheat and/or rice flour. It shall not contain sand, gravel or other foreign mineral matter, colophony resin, galbonum resin, ammoniacum resin or any other foreign resin. The ash content shall not exceed 10 per cent of its weight and the alcohol extract (with 90 per cent alcohol) shall not be less than 10 per cent. Use of coal tar dyes or mineral pigment is prohibited. (b)

A 05.01. Turmeric (Haldi) means the dried rhizome or bulbous root of plants of genus *Curcuma* and species *longa* and includes turmeric in whatsoever form. It shall be free from damage by insect pest, from lead chromate and other artificial colouring matter and shall not contain more than 2.5 parts per million of lead. It shall conform to the following standards :

- (a) Moisture shall not be more than 10 per cent.
- (b) The characteristic boric acid test shall be positive.
- (c) Total ash shall be not more than 7 per cent.
- (d) Ash insoluble in HCl shall not exceed 1.5 per cent.

A 05.02 Cumin seed (*Cuminum cyminum*) shall not contain—

- (a) Substituted by notification No. 2755 dated 20th Nov. 1956.
- (b) Substituted by notification No. 2755 dated the 20th Nov. 1956.

- (a) more than 5 per cent of foreign seeds,
- (b) more than 9.5 per cent of total ash, and
- (c) more than 1.5 per cent of ash insoluble in HCl.

A.05.03. Caraway (*Carcum carvi*) seeds shall not contain –

- (a) more than 5 per cent of foreign seeds.
- (b) more than 8 per cent of total ash. and
- (c) more than 1.5 per cent of ash insoluble in HCl.

A 05.04. Cinnamom means the dried inner bark of *Cinnamomum zeylanicum*, powdered cinnamon shall not contain any cassia nor any other foreign vegetable substance. It shall contain not more than eight per cent of total ash and not more than two per cent. of ash insoluble in hydrochloric acid and shall contain not less than 0.5 per cent of volatile essential oil.

A.05.05. Cloves means the dried flower-buds of *Eugenia Caryophyllata*. They shall not contain any exhausted or partly-exhausted cloves, nor any foreign vegetable or mineral substance not more than five per cent by weight of clove stems. It shall contain not less than 15 per cent of volatile ether extract, not more than 7 per cent of total ash and not more than 0.5 per cent of ash insoluble in HCl.

A 05.06. Coriander is the dried fruit of the coriander plant, and shall not contain more than 7 per cent of total ash, and 1.5 per cent of ash insoluble in hydrochloric acid.

A.05.07(a) **Black Pepper** or **Pepper Corn** means the sound fruit of *Piper nigrum* having the characteristic appearance and shall conform to the following standards:—

(a) Deteriorated fruits and any extraneous matter shall not exceed 3 per cent.

(b) Light berries shall not exceed 5 per cent.

(c) Total non-volatile ether extract shall be not less than 7 per cent.

(d) Total starch content shall be not be less than 30 per cent.

(e) Total ash content shall not exceed 8 per cent, and

(f) Ash insoluble in HCl shall not exceed 1.5 per cent.

A. 05.08. **Ginger** means the washed and dried or the decorated and dried rhizome of *Zingiber officinale* and shall be free from damage from insect pests. Sulphur dioxide may be used as a preservative,

(a) Clauses A.05.07 to A.05.15 are added by notification No. P.F.A./F. 14-31 (B) 56-PH dated 14th July, 1956.

It shall conform to the following analytical standards :

- (a) Alcohol (90 per cent) soluble extract Not less than 4.5 per cent.
- (b) Ash Not more than 7.0 per cent.
- (c) Water soluble ash ... Not less than 1.7 per cent.
- (d) Cold water soluble extract... Not less than 10.0 per cent.

A. 05.09. Cardamom : 'Lesser Cardamom' or Chota Ilaychi means the dried nearly ripe fruit of *Electtaria cardamomum*. It shall not contain more than 5 per cent of damaged seed or extraneous matter and shall be free from sand, earth, dirt and admixture by substituted seeds. It shall contain not less than 3.5 per cent of volatile oil. The total ash content shall not exceed 8 per cent of ash insoluble in hydrochloric acid 3 per cent.

Greater Cardamom : Bara Ilaychi shall be the dried, nearly ripe fruit of the various species of the genus *Ammomum* and shall contain not less than 1.0 per cent of volatile oils. The total ash content shall not exceed 8 per cent and ash insoluble in hydrochloric acid 3 per cent.

A. 05.10. Chillies (Capsicum) means the dried, ripe fruits of the genus *Capsicum* and may contain brownish yellow flat seeds and shall be free from sand, earth, or dirt. It shall be free from infestation, extraneous colouring matter, oil and other foreign substances or substitutes. It shall contain —

- (a) not more than 3.0 per cent of calces and pedices. (b) not more than 1.0 per cent foreign organic matter. (c) not more than 8.0 per cent total ash. (d) not more than 1.25 per cent ash insoluble in hydrochloric acid. (e) not more than 30 per cent crude fibre, (f) not less than 12 per cent non-volatile ether extract.

A. 05.11. Aniseed or Saunf is the dried, ripe fruit of *Pimpinella anisum*. It shall have the characteristic appearance and shall be free from sand, earth, dirt and admixture by substituted seeds. It shall not contain :

- (a) more than 5 per cent of foreign seeds or matter. (b) more than 9 per cent of total ash. (c) more than 1.5 per cent of ash insoluble in hydrochloric acid. (d) less than 2 per cent volatile oil.

A. 05.12. Fennel fruit (or seeds) or Sowa means the dried, ripe fruit of cultivated plants of *Foeniculum vulgare*. The fruit shall be sound and free from sand, earth or other dirt and shall not contain :

- (a) more than 4 per cent of foreign organic matter seeds or stalks. (b) more than 9 per cent of total ash (c) more than

2 per cent of ash insoluble in hydrochloric acid. (d) less than 4 per cent of volatile oil.

A. 05.13. Fenugreek (Methi) is the dried ripe seeds of *Trigonella foenumgraecum*. It shall not contain more than 5 per cent damaged seeds or extraneous matter and shall be free from dust, dirt, extraneous weed seeds, off smell and insects. It shall not contain :—

(a) more than 10 per cent of moisture, (b) more than 5 per cent of foreign organic matter, (c) more than 7 per cent of total ash, (d) more than 2 per cent of ash insoluble in hydrochloric acid, (e) less than 30 per cent of water soluble extract.

A. 05.14, Nutmeg (Jaiphal) means the dried seed (kernel) of the fruit of *Myristica fragrans*. It shall be sound and free from infestation and conform to the following specifications :

(a) not more than 5 per cent of total ash, (b) not more than 0.5 per cent of ash insoluble in hydrochloric acid, (c) not less than 25 per cent of non-volatile ether extract, (d) not more than 10 per cent crude fibre.

A. 05.15. Mace (Jaitree) means the dried outer coat or arillus of the fruit, *Myristica fragrans* and shall not contain the arillus of any other variety of *Myristica* including *M. Malabarica* or *Fatua* (Bombay Mace) and *M. Argentes* (wild Mace). It shall not contain :

(a) more than 5 per cent of the deteriorated article or extraneous or foreign organic matter.

(b) more than 3 per cent of total ash.

(c) more than 10 per cent of crude fibre.

(d) less than 20 per cent and not more than 30 per cent of non-volatile ether extract.

A. 06. Bean means dry kidney shaped or flattened seeds of the leguminous varieties used as food either whole or prepared as dhal. It shall not contain hydrocyanic acid exceeding 20 parts per million as determined by A. O. A. C. Maceration method.

A. 07. Sweetening Agents

A. 07. 01. Cane sugar is the crystallized sugar obtained from sugar-cane, beet-root, etc. and includes the refined product obtained from gur.

It shall contain not more than 0.7 per cent of ash, not more than 1.5 per cent of water and not less than 96.5 per cent of sucrose.

A. 07.02. Bura shall contain not less than 96.5 per cent of total sugar expressed as sucrose and should contain not more than

half per cent of its weight as insoluble ash. It should be free from all poisonous matter. In the case of Khandsari the minimum sugar content in term of sucrose should be not less than 90 per cent.

A. 07.03. Honey means the food derived entirely from the work of bees operating upon the nectar of flowers and other sweet exudation of plants. It shall not contain more than (a) 25 per cent of moisture (b) 0.5 per cent of ash and (c) 10 per cent of sucrose. The minimum reducing sugar content shall be 60 per cent. Fiehe's test should be negative.

A. 07. 04. Ice-candy means the frozen ice produce containing sugar, with or without the addition of the permitted colouring or flavouring substances.

A.07.05.(a) Gur or jaggery means the product obtained by boiling or processing juice pressed out of sugar cane or extracted from palmyra palm, date palm or coconut palm. It shall be free from substances deleterious to health and shall conform to the following analytical standards on dry weight basis :

- (i) total sugars not less than 90 per cent and sucrose not less than 70 per cent.
- (ii) Extraneous matter insoluble in water not more than 2 per cent.
- (iii) Total ash not more than 6 per cent.
- (iv) Ash insoluble in hydrochloric acid, (HCl) not more than 0.5 per cent.

Gur or jaggery other than that of the liquid or semi-liquid variety, shall not contain more than 10 per cent moisture.

A.08 Coffee

A.08. (1) Coffee (green, raw or unroasted) means the seed of Coffee Arabica, Coffee liberica or Coffee robusta; freed from all but a small portion of its spermoderm by decortication.

(2) Roasted Coffee means properly cleaned green coffee which has been roasted to a brown colour and has developed its characteristic aroma.

(3) Ground Coffee means the powdered product obtained from 'roasted coffee' only and shall be free from husk.

(4) Coffee (green, raw or unroasted), 'roasted coffee' and 'ground coffee' shall be free from any artificial colouring, flavouring facing, extraneous matter or glazing substances and shall be in

(a). Added by notification no. 1687 P. F. A/F 14-31 (B)/56-PH dated 14th July, 1956.

sound, dry and fresh condition free from rancid or obnoxious flavour.

(5) Coffee (green, raw or unroasted), 'roasted coffee' and 'ground coffee' shall conform to the following analytical standards:—

- (i) Total ash (determined on the sample dried to constant weight at 100°C, shall be feathery white or bluish-white in colour and shall be not less than 3.5 per cent and not more than 5.0 per cent by weight of which not less than 65 per cent, shall be soluble in boiling distilled water. The ash insoluble in hot dilute HCl shall be not more than 0.1 per cent.
- (ii) The alkalinity of the ash per gram of dried coffee shall be equivalent to not less than 3.4 ml. and not more than 4.4 ml. of N/10 acid.
- (iii) The caffeine content, as obtained by standard methods, shall be not less than 1.2 per cent.
- (iv) The aqueous extract (determined by extraction of 2 grams of the sample dried to constant weight at 100°C with 100 ml. of boiling distilled water for one hour under reflux) shall be not less than 25 per cent and not more than 32 per cent.

A.0802. Chicory means the dried and roasted root of *Cichorium intybus* linn,

A.0803. Coffee Chicory mixture of Coffee mixed with chicory or Coffee and chicory shall be pure ground coffee mixed with roasted and ground chicory and shall be in sound, dry and dust free condition with no rancid or obnoxious flavour.

Any tin or other receptacle containing a mixture of coffee and chicory shall not bear any misleading expression.

The expression "French Coffee" may be used if followed by the words 'mixed with chicory' or blended with chicory.(b)

A.09. Curry Powder.—Curry powder shall contain not less than 85 per cent by weight of condiments and spices belonging to the group of aromatic herbs and seeds such as black-pepper, cinnamon, cloves, coriander, cardamons, chillies, cumin seeds, fenugreek, garlic, ginger, mustard, poppy seeds, turmeric, mace, nutmeg, curry leaves, white pepper, saffron and aniseeds, and shall contain not more than 15 per cent by weight of farinaceous matter and salt. If the manufacture includes any spices, condiments, or any substance other than the aromatic herbs and seeds enumerated, the

(b). Substituted by Notification No. 2755 dated 20th November, 1956.

exact nature of such added ingredient or ingredients shall be specified on the wrapper or label prominently and such additions shall be made in lieu of, or partial replacement of farinaceous material and/or salt quota. The aromatic seeds and herbs enumerated constitute the proper ingredients and one or more than one, or all of these may be used at the discretion of the manufacturer in the preparation of the curry powder.

A.10. Edible Fat.

A.10.01. Beef fat or suet means fat obtained from a beef carcass. It shall have a Saponification value varying from 193 to 200 and an Iodine value from 35 to 46.

A.10.02. Mutton fat means fat obtained from the carcass of sheep. It shall have a Saponification value varying from 192 to 195 and an Iodine value from 35 to 46.

A.10.03. Goat fat means the rendered fat from goat. It shall have a Saponification value varying from 193 to 196 and an Iodine value from 36 to 45.

A.10.04. Lard :— means the rendered fat from hogs and shall not contain more than one per cent of substances other than fatty acids and fat. It shall have a saponification value, varying from 192 to 198 and an Iodine value from 2 to 65.

A.11. Milk and Milk Products.

A.11.01. Milk means the normal clean and fresh secretion obtained by complete milking of the udder of a healthy cow, buffalo, goat, or sheep during the period following at least 72 hours after calving or until colostrum free whether such secretion has been processed or not.

A.11.01.01. Cow milk shall contain not less than 3.5 per cent of milk fat except in Orissa, where it shall be not less than 3 per cent and in Punjab and PEPSU where it shall be not less than 4.0 per cent. The milk solids other than milk fat, shall be not less than 8.5 per cent.

A.11.01.02. Buffalo milk shall contain not less than 5.0 per cent of milk fat except in Delhi, Punjab, PEPSU, Uttar Pradesh, Bihar, West Bengal, Assam, Bombay and Saurashtra where it shall be not less than 6 per cent. The milk solids other than milk fat, shall be not less than 9 per cent.

A.11.01.03. Goat or sheep milk shall contain not less than 3.0 per cent of milk fat except in Madhaya Pradesh, Punjab, PEPSU, Bombay, Uttar Pradesh, Travancore Cochin where it shall not be less than 3.5 per cent. The milk solids other than milk fat, shall be not less than 9 per cent.

Where milk, other than skimmed milk, is sold or offered for sale without any indication as to whether it is derived from cow,

buffalo, goat, or sheep, the standard prescribed for buffalo milk shall apply.

A.11.02 Skimmed milk, either fresh or reconstituted, means milk from which all or most of the milk fat has been removed by mechanical or any other process and includes separated milk or "machine skimmed milk". The milk solids other than milk fat shall be not less than 8.5 per cent. (c)

A.11.03. Butter-milk means the product obtained after removal of butter from curds by churning or otherwise.

A.11.04. Toned Milk shall be prepared by toning milk with fresh separated milk or with separated milk reconstituted from spray, dried skimmed milk powder.

It shall contain not less than 3.0 per cent of milk fat and 8.5 per cent of milk solids other than milk fat.

A.11.05. Butter means the product prepared exclusively from the milk or cream of cow or buffalo, or both, with or without the addition of salt and annatto and shall contain not less than 80 per cent of milk fat and not more than 16 per cent of moisture. No preservative is permissible in butter.

A.11.06. Dahi or curd—(a) Whole milk dahi or curd means the product obtained from fresh whole milk either of cow or buffalo by souring. It shall not contain any ingredient not found in milk.

(b) Skimmed milk dahi or curd means the product obtained from skimmed milk either of cow or buffalo by souring. It shall not contain any ingredient not found in milk.

The standard of purity of dahi or curd shall be same as prescribed for the milk from which it is derived.

A.11.07. Condensed milk means milk which has been concentrated from full cream milk by removal of part of its water with or without the addition of sugar, and includes the article commonly known as 'evaporated milk' but does not include the article commonly known as 'dried milk' or 'milk powder'. It shall be free from preservatives other than sugar and contain at least 31 per cent of milk solids of which at least 9 per cent shall be fat.

A.11.08. Condensed skimmed milk means skimmed milk which has been concentrated by removal of part of its water with or without the addition of sugar. The total milk solids including milk fat shall not be below 26.0 per cent in the sweetened variety and 20 per cent in the unsweetened variety.

A.11.09. Chhanna means the product obtained by precipitating the curd from boiling whole milk of cow and buffalo by the addition of lactic or citric acids, or any other suitable coagulating agent.

(c). Substituted by notification No. 2755 dated 20th November 1969

Chhanna prepared from cow milk or buffalo milk shall contain a minimum of 15 per cent of milk fat.

A.11.10. Cream means that portion of milk rich in milk fat which has risen to the surface of milk on standing and has been removed or which has been separated from milk by centrifugal force. It shall contain not less than 23 per cent of milk fat and shall not contain any added substance. The fat separated from cream shall conform to the specification prescribed for ghee.(d)

A.11.10.01. Dry whole milk (Milk powder, Powdered milk, Powdered whole milk) shall contain not less than 95 per cent of milk solids and 26 per cent of milk fat.

A.11.10.02. Dry skim milk (Skim milk powder, Powdered skim milk) shall contain not less than 95 per cent of milk solids.

A.11.11. Ice-cream means the frozen food made with cream, milk or other milk products, sweetened with sugar or honey and with or without (a) egg, (b) fruits, (c) nuts, (d) chocolates, (e) stabiliser not more than 0.5 per cent of the finished product and (f) permissible flavour or colour. It shall contain not less than 36 per cent by weight of solids and 10 per cent by weight of milk fat except that when the ice-cream contains fruits or nuts or both, the content of milk fat may be proportionately reduced but not less than 8.0 per cent. by weight. It shall not contain any starch, artificial sweetening agent or any other extraneous matter. Ice-cream prepared from skimmed milk shall not contain less than 8.5 per cent of milk solids other than milk fat.

A.11.12. Mixed Ice-Cream means the same ice-cream in composition except that it may contain starch or any other innocuous filler. The fat content and total solid content should be the same as prescribed for ice-cream.

A.11.13. Khoa means the product derived from milk of cow or buffalo by partial desiccation of water therefrom by the process of heating and it shall not contain any ingredient not found in milk. The moisture content of Khoa shall not exceed 10 per cent and the fat content shall not be less than 20 per cent

A.11.14. Ghee means the pure clarified fat derived solely from milk or from curds or from cream to which, no colouring matter or preservative has been added. It shall conform to the following specifications in Punjab, Uttar Pradesh, Bhopal, Vindhya Pradesh, Bihar, West Bengal (except Bishnupur) and PEPSU (except Mahendragarh):

- (a) Butyro-refractometer reading 40.0 to 43.0 at 40°C

(d). Substituted by notification No. 2755 dated 20th Nov. 1956.

(b) Reichert Value	Not less than 28.0 p. c.
(c) Free fatty acid as Oleic acid	Not more than 3.0 per cent.
(d) Moisture	Not more than 0.3 per cent.

In Madras, Andhra, Travancore-Cochin, Hyderabad, Mysore Orissa, Assam, Tripura, Manipur, Madhya Bharat, Bombay, Himachal Pradesh, Mahendragarh District of PEPSU, Madhya Pradesh (except cotton tract areas) and Rajasthan (except Jodhpur) the specifications will be the same as above except that Reichert value shall be not less than 26.0.

In Saurashtra, Kutch, cotton tract areas of Madhya Pradesh, Jodhpur Division of Rajasthan and Bishnupur Sub-division of West Bengal the Reichert Value shall not be less than 21 and the Butyro refractometer reading at 40°C shall be between 41.5 to 45.0 The limits for free fatty acids and moisture shall be the same as for ghee in Punjab, PEPSU etc. given above.

Explanation—By cotton tract is meant the areas in Madhya Pradesh where cotton seed is extensively fed to the cattle.(e)

A. 12. Margarin means any article of food which essembles butter in consistency, appearance and moisture content. It shall contain at least 80 per cent of vegetable oils or a mixture of vegetable oils with hydrogenated vegetable oils and not more than 16 per cent moisture. It shall contain not less than 5 per cent of its weight of til oil but sufficient to respond to Baduin Test, the red colour produced being not lighter than 2.0 Red Unit in 1 cm. cell on a Lovibond Scale. (f)

A. 13. Saffron means dried stigmata and tops of styles of *Crocus sativus*, and (a) it must not contain any foreign colouring matter or any other foreign matter, organic or inorganic, (b) it must not lose more than 12 per cent of its weight when dried at 100°C (212°F) to constant weight, and (c) it must contain not less than 5 per cent of petroleum ether extract.

A. 14. Tea means tea derived exclusively "from the leaves, buds and tender stems of plants" of the *Camelia* genus and the species. It shall conform to the following specifications:

- (a) Total ash determined on tea dried to a constant weight at 100°C. 5.0 to 8.0 per cent.

(e) Added by notification No. PFA/F-14-31 (B) 156 P.H. dated 14th July 1956.

(f) Substituted by notification No. 2755 dated 20th Nov. 1956.

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| (b) Total ash soluble in boiling distilled water. | Not less than 40.4 per cent of total ash. |
| (c) Ash insoluble in HCl. | Not more than 1.0 per cent. |
| (d) Extract obtained by boiling dry tea (dried at constant weight at 100°C) with 100 parts of distilled water for one hour under reflux. | Not less than 35 per cent. |
| (e) Alkalinity of soluble ash. | Not less than 1.3 per cent and not more than 2 per cent expressed as K_2O |
| (f) Crude fibre. | Not more than 15 per cent. |

A. 15. Edible Common Salt means a crystalline solid, white or pale pink or light grey in colour, free from visible contamination with clay, grit and other extraneous adulterants and impurities. It shall not contain moisture in excess of 6 per cent of the weight of the undried sample. It shall contain on dry weight basis (a) at least 96.0 per cent by weight of sodium chloride ($NaCl$), (b) not more 1.0 per cent by weight of matter insoluble in water and (c) not more than 3.0 per cent by weight of matter soluble in water other than sodium chloride.

A. 16. Food Products. (g)

A.16.01. Fruit Juice means the unfermented and unconcentrated liquid expressed from sound, ripe fresh fruit, and with or without :—

- (a) Sugar, dextrose, invert sugar, or liquid, glucose, ether singly or in combination.
- (b) Water, peel oil, fruit essences and flavour, common salt, ascorbic acid, citric acid and permitted colours and preservative.

The acidity of the finished product calculated as citric acid shall not be less than 4 per cent in the case of pure lemon juice or pulp and not less than 5 per cent in the case of pure lime juice but shall not exceed 3.5 per cent in the case of other juices

A. 16.02. Tomato Juice means canned or bottled, unconcentrated pasteurized juice expressed from tomato with a proportion of the pulp expressed with or without the application of heat by any method that does not add water to such juice, from whole, ripe tomatoes from which all stems and objectionable portions have been removed and with or without—

(g) Added by notification No. P.F.A./F. 14-31 (B) 56-PH dated 14th July 1956.

- (a) salt,
- (b) sugar, or dextrose, or both added in dry form,
- (c) citric acid, malic acid or ascorbic acid,
- (d) permitted colours.

The total soluble solids W/W shall not be less than 5 per cent.

A. 16.03 Fruit Syrup means sweetened fruit juice containing sugar, dextrose, invert sugar, or liquid glucose either singly or in combination, with or without—

- (a) water, peel-oil, fruit essences and flavours, common salt,
- (b) citric acid, ascorbic acid,
- (c) permitted preservative and colours.

The total soluble solids W/W shall be not less than 65 per cent.

A. 16.04. Fruit Squash means the expressed juice of the sound ripe fruit with the pulp, containing sugar, dextrose, invert sugar or liquid glucose either single or in combination and with or without—

- (a) water, peel-oil, fruit essences and flavours, common salt,
- (b) citric acid, ascorbic acid,
- (c) permitted preservative and colours.

The total soluble solids W/W in the finished product shall be not less than 40 per cent.

A. 16.05. Fruit Beverage or Fruit Drink means any beverage or drink which is purported to be prepared from fruit juice and water, or carbonated water, and containing sugar, dextrose, invert sugar or liquid glucose either singly or in combination and with or without—

- (a) water, peel-oil, fruit essences and flavours,
- (b) citric acid, ascorbic acid,
- (c) permitted preservative and colours.

Total soluble solids W/W in the final product shall be not less than 10 per cent.

A. 16.06. Tomato Sauce, Tomato Ketchup, Tomato Relish or any other expression conveying the meaning that the product designated is a form of a tomato sauce, shall be a preparation of sound and ripe tomatoes with or without—

- (a) sugar, salt, vinegar, acetic acid, onions, spices or condiments,

- (b) citric acid, ascorbic acid,
- (c) permitted preservative and colours.

Total acidity in terms of acetic acid shall be not less than 1.2 per cent and the total soluble solids W/W not less than 25 per cent. It shall not contain any other vegetable substance.

A. 16.07. **Jam** means the product obtained by processing fresh fruit, canned fruit, dried fruit or fruit pulp, with water, sugar, dextrose, invert sugar or liquid glucose either singly or in combination by boiling to a suitable consistency and with or without :

- (a) citric, malic, ascorbic acid,
- (b) permitted preservative and colours,
- (c) pectin in the form of fruit juice or pulp,

The minimum soluble solids W/W shall be 60 per cent. Jam shall not contain :

- (a) less than 45 per cent of fruit except where fruit is strawberry or raspberry when it shall contain not less than 25 per cent,
- (b) sweetening agent other than specified above,
- (c) apple or rhubarb, but it may contain in any amount that reasonably compensates for any deficiency in the natural acidity or pectin content of the fruit used in its preparation,
- (d) tartaric acid, or
- (e) extraneous pectin, agar or gelatin.

A. 16.08 **Jam with added pectin** means the product obtained by processing fresh fruit, canned fruit, dried fruit or fruit pulp, with water, sugar, dextrose, invert sugar or liquid glucose either singly or in combination, by boiling to a suitable consistency and with or without :

- (a) (i) citric, malic, ascorbic acid,
- (ii) lemon or lime juice,
- (iii) cider vinegar,
- (b) pectin or pectinous preparation,
- (c) permitted preservative and colours.

It shall not contain less than 27 per cent of the named fruit except where such fruit is strawberry or raspberry when it shall contain not less than 15 per cent.

Total soluble solids W/W shall not be less than 60 per cent. The product shall be labelled as 'Jam with added Pectin'.

A. 16.09, Marmalade means the product made from any combination of peel, pulp and juice of the named citrus fruit by boiling with water, sugar, dextrose, invert sugar or liquid glucose either singly or in combination, to a suitable consistency and with or without an acid ingredient in an amount that reasonably compensates for any deficiency in the natural acidity of the fruit used in its preparation, consisting of :

- (a) citric, malic, tartaric or ascorbic acid,
- (b) lemon or lime juice,
- (c) cider vinegar.

It may contain permitted preservative and colours.

It shall not contain less than 45 per cent of the named fruit.

Total soluble solids W/W shall be not less than 60 per cent.

A. 16.10 Marmalade with added Pectin means the product made from any combination of peel, pulp and juice of the named citrus fruit by boiling with water, sugar, dextrose, invert sugar or liquid glucose, either singly or in combination to a suitable consistency with or without :

- (a) (i) citric, malic tartaric ascorbic acid,
(ii) lemon or lime juice,
- (b) pectin or pectinous preparation,
- (c) permitted preservative and colours.

It shall not contain less than 27 per cent of the named fruit.

Total soluble solids W/W shall be not than 60 per cent.

The product should be labelled as 'Marmalade with added pectin'.

A.16-11. Fruit Chutney means a preparation made from sound fruits and vegetables with spices, salt, onion, garlic, sugar, jaggery, vinegar or acetic acid. and shall contain not less than 50 per cent of total soluble solids W/W and permitted preservative.

A.16.12. Sauce shall be the product derived from any suitable kind and variety of fruit and vegetable which are wholesome and which shall be practically free from insect or fungal attack or blemish affecting the quality of the fruit or vegetable. The only substances that may be added are fruit, vegetable, their pulp, juice, dried fruit, sugar, spices, salt, vinegar, acetic acid, citric acid, malic acid, onion, garlic, flavouring material and permitted preservative and colours.

A.17 Edible Oils. (h)

(h) Added by notification No. P.F.A. 14-31 (C) 56-PH. dated 14th July 1956.

A.17.01 Coconut oil (Naryal-ka-tel) means the oil expressed from copra obtained from kernel of *Cocos nucifera* nuts. It shall be clear and free from rancidity, suspended or other foreign matter, separated water, added colouring or flavouring substances, or mineral oil. It shall conform to the following standards :—

(a) Butyro-refractometer reading at 40°C.	34.0 to 35.5
(b) Saponification value.	250 to 26.0
(c) Iodine value	7.5 to 10.0
(d) Polenske value	not less than 18.0
(e) Free fatty acid as Oleic acid.	not more than 3.0 per cent.

A.17.02. Cotton seed oil (Binola-ka-tel) means the oil expressed from clean, and sound decorticated cotton seeds (*Genus Gossypium*) refined and dehydrated. It shall be clear, free from rancidity, suspended or other foreign matter, separated water, added colouring or flavouring substances. It shall conform to the following standards :—

(a) Butyro-refractometer	57.9 to 60.2
(b) Saponification value	190 to 198
(c) Iodine value	105 to 112
(d) Unsaponifiable matter	Not more than 1.5 per cent.
(e) Free fatty acid as Oleic acid	Not more than 1.0 per cent.

A.17.03. Ground nut oil (moongh-phali-ka-tel) means the oil expressed from clean and sound ground nuts (*Arachis hypogaeae*). It shall be clear, free from rancidity, suspended or other foreign matter, separated water, added colouring or flavouring substances, or mineral oil. It shall conform to the following standards :

(a) Butyro-refractometer reading at 40°C	54.0 to 57.1
(b) Saponification value	188 to 196
(c) Iodine value	85 to 99.
(d) Unsaponifiable matter	Not more than 1.0 per cent.
(e) Free fatty acid as Oleic acid	Not more than 3.0 per
(f) Belhier test (turbidity temperature)	39°C to 41°C,

A.17.04. Linseed oil (Alsi-ka-tel) means the oil obtained by process of expressing clean and sound linseed (*Linum usitatissi-*

num). It shall be clear, free from rancidity, suspended or other foreign matter separated water added, colouring or flavouring substances, or mineral oil. It shall conform to the following standards :

(a) Butyro-refractometer reading at 40°C.	69.5 to 74.3.
(b) Saponification value	188 to 195.
(c) Iodine value	Not less than 170
(d) Unsaponifiable matter	Not more than 1.5 per cent.
(e) Free fatty acid as Oleic acid	Not more than 2.0 per cent.

A 17.05 **Mahua oil** means the oil expressed from clean and sound seeds or nuts of *Madhuca* (*Bassia latifolia*) or *B longifolia* or a mixture of both. It shall be clear and shall be free from rancidity, suspended or other foreign matter, separated water, added colouring or flavouring substances, or mineral oil. It shall conform to the following standards :

(a) Butyro-refractometer reading at 40°C.	49.5 to 52.7
(b) Saponification value	587 to 196.
(c) Iodine value	58 to 70.
(d) Unsaponifiable matter	Not more than 2.0 per cent.
(e) Free fatty acid as Oleic acid	Not more than 2.0 per cent.

A 17.06. **Mustard oil** (**Sarson-ka-tel**) means the oil expressed from clean and sound mustard seeds, belonging to the *compestris*, *junceae* or *napus* varieties of *Brassica*. It shall be clear, free from rancidity, suspended or foreign matter, separated water, added colouring or flavouring substances, or mineral oil. It shall conform to the following standards

(a) Butyro-refractometer reading at 40°C.	58.0 to 60.5.
(b) Saponification value	168 to 176.
(c) Iodine value	96 to 108.
(d) Unsaponifiable matter	Not more than 1.2 per cent.
(e) Free fatty acid as Oleic acid.	Not more than 3.0 per cent.

The test for argemone oil should be negative.

A.17.07. Olive oil means the oil expressed from the ripe olive fruit (*Olea europea*). It shall be clear, free from rancidity, suspended or other foreign matter, separated water, added colouring or flavouring substances, or mineral oil. It shall conform to the following standards :

(a) Butyro-refractometer reading at 40°C.	53.0 to 56.0.
(b) Saponification value	185 to 196.
(c) Iodine value	79 to 90.
(d) Unsaponifiable matter	Not more than 1.0 per cent.
(e) Free fatty acid as Oleic acid	Not more than 3.0 per cent.

A.17.08. Poppy seed oil means the oil expressed from poppy seeds (*Papaver somniferum*). It shall be clear, free from rancidity, suspended or other foreign matter, separated water, added colouring or flavouring substances, or mineral oil. It shall conform to the following standards :

(a) Butyro-refractometer reading at 40°C	60.0 to 64.0
(b) Saponification value	186 to 194.
(c) Iodine value	133 to 143.
(d) Unsaponifiable matter	Not more than 1.0 per cent.
(e) Free fatty acid as Oleic acid	Not more than 3.0 per cent.

A.17.09. Safflower oil (Berrey-ka-tel) means the oil expressed from the seeds of *Carthamus tinctorius*. It shall be clear, free from rancidity, suspended or other foreign matter, separated water, added colouring or flavouring substances, or mineral oil. It shall conform to the following standards :

(a) Butyro-refractometer reading at 40°C.	62.4 to 64.7
(b) Saponification value	186 to 196.
(c) Iodine value	135 to 146.
(d) Unsaponifiable matter	Not more than 1.0 per cent.
(e) Free fatty acid as Oleic acid.	Not more than 3.0 per cent.

A.17.10. Taramira oil means the oil expressed from clean and sound seeds of *Taramira (Eruca sativa)*. It shall be clear, free from rancidity, suspended or other foreign matter, separated water, added colouring or flavouring substances, or mineral oil. It shall conform to the following standards :

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| (a) Butyro-refractometer reading at 40°C | 58.0 to 60.0 |
| (b) Saponification value | 174 to 177 |
| (c) Iodine value | 99 to 105 |
| (d) Unsaponifiable matter | Not more than 1.0 per cent |
| (e) Free fatty acid as Oleic acid | Not more than 3.0 per cent. |

A.17.11. Til Oil (Gingelly or Sesame oil) means the oil expressed from clean and sound seeds of Till (*Sesamum indicum*) black, brown, white, or mixed. It shall be clear, free from rancidity, suspended or other foreign matter, separated water, added colouring or flavouring substances, or mineral oil. It shall conform to the following standards :

- | | |
|--|-----------------------------|
| (a) Butyro-refractometer reading at 40°C | 58.0 to 61.0 |
| (b) Saponification value | 188 to 193 |
| (c) Iodine value | 105 to 115 |
| (d) Unsaponifiable matter | Not more than 1.5 per cent |
| (e) Free fatty acid as Oleic acid | Not more than 3.0 per cent. |

A.17.12. Niger Seed Oil (Sargiya-ka-tel) means the edible oil obtained by process of expressing clean and sound seeds of *Guizotia abyssinica*. It shall be clear and free from rancidity, suspended or other foreign matter, separated water, added colouring or flavouring substances, mineral, or other oil. It shall conform to the following standards :

- | | |
|--|----------------------------|
| (a) Butyro refractometer reading at 40°C | 61.0 to 65.0 |
| (b) Saponification value | 188 to 193 |
| (c) Iodine value | 125 to 135 |
| (d) Unsaponifiable matter | Not more than 1.0 per cent |
| (e) Free fatty acids as Oleic acid. | Not more than 3.0 per cent |
| (f) Bellier test (turbidity temperature) | 25°C to 26°C |

18. Cereals :(i)

A.18.0 Atta means the coarse product obtained by milling or grinding wheat and sieving it. It shall contain not more than 2.5 per cent of ash and not less than 7 per cent of gluten both calculated on dry weight basis. It shall be free from grit and the alcoholic

(i) Added by notification No. P.F.A. F.14-31 (B) 56 P.H. dated 14 July 1956.

acidity (with 90 per cent alcohol) shall not exceed 0.1 per cent expressed as sulphuric acid (H_2SO_4)

A.18.02. **Maida** means the fine product made by milling or grinding wheat and bolting or dressing the resulting wheat meal. It shall contain not more than 1 per cent of ash and not less than 8.0 per cent of gluten both calculated on dry weight basis. The alcoholic acidity (with 90 per cent alcohol) shall not exceed 0.1 per cent expressed as Sulphuric acid (H_2SO_4).

A.18.03 **Samelina (Suji)** is the food prepared from wheat by the process of grinding and bolting to such a degree of fineness that it passes through a No. 20 Sieve and not more than 3 per cent passes through a No. 100 Sieve. It shall be free from grit and insect infestation, musty smell and off odour and should be creamy yellow in colour.

It shall contain :

- (a) not more than 1 per cent of total ash,
- (b) not more than 13.5 per cent of moisture,
- (c) not less than 6.0 per cent of gluten.

A 19. **Vegetable Oil Product or Vanaspati (j)** means any refined edible oil or oils, subjected to a process of hydrogenation in any form. It shall be prepared by hydrogenation from ground nut oil, cotton seed oil and sesame oil or mixtures thereof or any other harmless vegetable oils allowed by the Government for the purpose. It shall conform to the standards specified below:

- (i) It shall not contain any harmful colouring, flavouring or any other matter deleterious to health.
- (ii) No colour shall be added to hydrogenated vegetable oil unless so authorised by Government, but in no event any colour resembling the colour of ghee shall be added.
- (iii) If any flavour is used, it shall be distinct from that of ghee, in accordance with a list of permissible flavours and in such quantities as may be prescribed by Government.
- (iv) It shall not have moisture exceeding 0.25 per cent.
- (v) The melting point as determined by the capillary slip method shall be from 33°C to 37°C both inclusive.
- (vi) The Butyro-refractometer reading at 40°C shall not be less than 48.

(j) See on page 375.

- (vii) It shall not have unsaponifiable matter exceeding 1.25 per cent.
- (viii) It shall not have free fatty acids (calculated as Oleic acid) exceeding 0.25 per cent.
- (ix) The product on melting shall be clear in appearance and shall be free from staleness or rancidity, and pleasant to taste and smell.
- (x) It shall contain raw or refined sesame (til) oil not less than 5 per cent by weight, but sufficient so that when the Vegetable Oil Product is mixed with refined ground nut oil in the proportion of 20:80; the red colour produced by the Baudouin test shall not be lighter than 2.0 Red units in a 1 cm. cell on a Lovibond scale.
- (xi) It shall contain not less than 700 I.U. of synthetic vitamin 'A' per ounce.

A. 20 (p) **Vinegar** means a liquid derived from alcoholic and acetous fermentation of any suitable medium such as fruits, malt, molasses, sugar cane juice, etc.

Vinegar shall conform to the following standards:—

1. It shall contain at least 3.75 grams of acetic acid per 100 ml.
2. It shall contain at least 1.5 per cent W/V of total solids and 0.18 per cent of ash.
3. It shall not contain (i) sulphuric acid or any other mineral acid (ii) lead or copper, (iii) arsenic in amounts exceeding 1.5 parts per million and (iv) any foreign substance or colouring matter except caramel.
4. Malt vinegar, in addition, shall have at least 0.05 per cent of phosphorus pentoxide (P_2O_5) and 0.04 per cent of nitrogen.

Brewed vinegar shall not be fortified with acetic acid.

Synthetic vinegar shall be distinctly labelled as 'Synthetic' and shall state on label 'prepared from acetic acid'.

A.21.(q) **Catechu (Edible)** shall be the dried aqueous extract prepared from the heart-wood of *Acacia catechu*. It shall be free from infestation, sand, earth or other dirt and shall conform to the following standards:—

(a) 5 ml. of 1 per cent aqueous solution, and 0.1 per cent

(p) Added by notification No. P.F.A./F. dated 14th July, 1956.

(q) Added by notification No. P.F.A./F dated 14th July 1957.

solution of ferric ammonium sulphate shall give a dark green colour, which on the addition of sodium hydroxide solution shall change to purple.

- (b) When dried to constant weight at 100°C it shall not lose more than 12 per cent of its weight.
- (c) Water insoluble residue (dried at 100°C) shall not be more than 25 per cent by weight.
- (d) Alcohol insoluble residue in 90 per cent alcohol dried at 100°C, not more than 30 per cent by weight.
- (e) Total ash on dry basis not more than 8 per cent by weight.
- (f) Ash insoluble in HCl not more than 0.5 per cent on dry weight basis.

A.22.(r) Gelatin shall be the purified air dried product obtained by extraction with hot water, of certain tissues such as skin, ligaments and bones of slaughtered healthy animals. It shall be colourless, transparent, odourless, in brittle sheets or in vitreous shreds, shall be free from objectionable taste and odour and from pathogenic bacteria and shall not contain any added colour, dyes of the inorganic group or coal tar dyes; shall not contain poisonous metals above the permissible limit; shall be completely soluble in acetic acid and insoluble in 90 per cent alcohol and ether, shall dissolve in water (1 in 50) and solidify to a jelly on cooling.

It shall not contain :—

- (a) more than 15 per cent moisture.
- (b) more than 3.25 per cent of total ash.
- (c) more than 3.50 parts per million of sulphur dioxide.
- (d) less than 15 per cent of nitrogen on dry weight basis.

Gelatin meant for human consumption should be labelled an 'Edible Gelatin.'

A.23. Mustard seed means the dried ripe seed of *Brassica nigra*, *Brassica Juncea* and other allied cultivated varieties of the species belonging to the natural order Cruciferae and to the genus *Sinapis* or *Brassica*. The common species are black or brown mustard (*B. nigra*), Brown or Serepta mustard (*B. besseriana*) white or yellow mustard (*B. alba*) and Indian mustard (*B. Juncea*).

It shall not contain :—

- (a) more than 5 per cent of foreign organic matter, and deteriorated or other seeds, and shall be free from insect pests. It shall be free from argemone seeds.

- (b) more than 5 per cent of total ash,
- (c) more than 1.5 per cent of ash insoluble in hydrochloric acid.
- (d) less than 6.6 per cent of volatile essential oil.

A.24. **Poppy Seed** is the dried, ripe seed from the fruit of Opium Poppy, *Papaver somniferum*. The seeds may be white or greyish in colour.

It shall not contain :—

- (a) more than 4 per cent by weight of other harmless foreign seeds, dust or other foreign or vegetable matter.
- (b) more than 8 per cent of total ash.
- (c) less than 40 per cent of oil.

APPENDIX C.

Punjab State rules under Section 24 of the Act.

Published in the Punjab Gazette, Part I, dated December 19, 1958/Agrahayana 28, 1880 Saka.

HEALTH DEPARTMENT.

The 11th December, 1958.

No. 12433-6HB-II-58/1663 — With reference to Punjab Government notification No. 1680-S-6HB-II-58/48310, dated the 14th June, 1958, and in exercise of the powers conferred by section 24 of the **Prevention of Food Adulteration Act, 1954** (No. 37 of 1954), the Governor of Punjab is pleased to make the following rules :—

The Prevention of Food Adulteration (Punjab) Rules 1958

PART I—PRELIMINARY

1. *Short title, extent and commencement* :—(1) These rules may be called the **Prevention of Food Adulteration (Punjab) Rules, 1958**.

(2) They shall extend to the whole of the State of Punjab.

(3) They shall come into force at once.

2. *Definition* :—In these rules, unless the context otherwise requires, —

(a) Act means the **Prevention of Food Adulteration Act, 1954** (No. 37 of 1944).

(b) Form means a form appended to these rules ;

(c) Health Officer means the **Divisional Medical Officer of Railways** in respect of Railway Stations within his jurisdiction which have been declared as local areas, or the **District Medical Officer**

of Health of a district or Bhakra Nangal Project Area, or the Medical Officer of Health of a Cantonment as defined in section 2 (xiv) of the Cantonments Act, 1924, or the Medical Officer of Health, Chandigarh Project Area, or the Municipal Medical Officer of Health of a local area, as the context of a case may mean or imply, but does not include a part-time or any honorary Municipal Medical Officer of Health ;

(d) Local Authority means, in the case of—

(i) a District Board area, the District Board as constituted and established under the Punjab District Boards Act, 1883, and if the District Board is dissolved, the authorities appointed by the State Government to exercise the functions of the District Board ;

(ii) Chandigarh Project Area, the Estate Officer, Chandigarh Project Area ;

(iii) Bhakra Nangal Project Area, the Administrator, Nangal Project Area ;

(iv) a railway station and its premises, the District Medical Officer of Railways having jurisdiction in that area ;

(e) Wholesaler means a manufacturer of any article or class of articles of food or a person who carries on any business involving the buying of articles of food in unopened packages and selling the same to retailers, and retailer means a person who is not a wholesaler.

PART II

3. *Powers of Food (Health) Authority* :—The State Government may, by an order in writing, delegate its powers to appoint food inspectors, to authorise a person to institute prosecution for an offence under the Act and such other powers exercisable by it under the Act as may be specified in the order to the Food (Health) Authority of the State of Punjab.

4. *Licensing Authority and Licences* :—(a) The local authority or any officer authorised by it by order in writing in this behalf shall be the licensing authority in its local area for purposes of issuing licences for the manufacture for sale, for storage, for the sale or for the distribution of the articles of food in respect of which a licence is necessary under the Prevention of Food Adulteration Rules, 1955.

(b) (i) An application for licence to manufacture for sale or store, sell or distribute any article of food for which a licence is required shall be made in Form A to the licensing authority and shall be accompanied by a fee of Rs. 5 in the case of a wholesaler and Rs. 2 in the case of a retailer,

(ii) The fee shall be credited to the local authority within whose jurisdiction the premises are situated.

(iii) The validity of every licence shall terminate on the 31st day of March immediately succeeding the date of issue.

(iv) Any person whose application for a licence has been rejected shall have a right of appeal to the District Magistrate.

(c) A licence shall be issued in Form B.

5. *Fees* :— (a) The fee to be charged by the Public Analyst, Punjab, for analysing articles of food under the Act shall be Rs. 5 per sample if sent by a local authority or by a purchaser under section 12 of the Act.

(b) The Public Analyst of a Laboratory maintained by local authority shall charge Rs. 5 per sample sent by another local authority and a fee at the following rates for a sample sent by an intending purchaser of a food article in order to ascertain the state of its purity :—

Ghee, Butter, Milk and Curd	... Rs. 2 per sample.
Red Chillies, Tea, Haldi and other such article	... Rs. 4 per sample.

(c) (i) In the case of a Laboratory maintained by a local authority 5 per cent of the total number of samples (third part) analysed in the said laboratory shall be analysed free of charge by the state Laboratory, provided the Health Officer of the local authority certifies that this second analysis is needed for the purposes of control.

(ii) The Food (Health) Authority or the Public Analyst, Punjab, may call for a second analysis of any sample that has been analysed in a laboratory of local authority for the same purpose, and in such circumstances no fee will be charged by State Laboratory for the analysis.

6. *Fees prescribed for obtaining a copy of Certificate of the Public Analyst* :— Any person from whom a sample is seized under the Act for analysis, may obtain a copy of the analysis certificate of the Public Analyst in respect of such articles on payment of a fee of Rs. 2.

7. *Fee how to be paid to the public analyst (Punjab)*.— (a) The fees prescribed shall be deposited in advance into the local treasury under the appropriate head and the receipt shall be forwarded to the Public Analyst simultaneously with the sample of food sent for analysis or with the application for a copy of the certificate of analysis or the fee may directly be sent to the Public Analyst by money order.

(b) In the case of a Food Laboratory maintained by a local authority, the fee shall be payable to the local authority concerned.

8. *Share of Local Authority out of Fines*:—The local authority shall be paid 50 per cent of fine imposed by the trying magistrate on realization of fine for the prosecution.

FORM A

[See rule. 4. b (i)]

for manufacture for sale

sale

.....of the food

Application for licence storage for sale

distribution

I/We.....resident of....., by occupationhereby
manufacture for sale
 apply for licence for sale.....of the food*.....on the
storage for sale
distribution

premises situated at.....

Dated.....

Signature.....

Address.....

FORM B

[See rule 4 (c)]

manufacture for sale

Licence for sale

..... of the food.

storage or sale

distribution

APPENDIX D.

THE ASSAM PURE FOOD ACT, 1947 (Act XXXII of 1947)

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context :—

(1) an article of food shall be deemed to be “adulterated”—

(i) if in any one or more of the following respects, namely,

* Name of the food.

- nature, substance, consistency, colour, smell, or quality, it is not the same as such food in its pure and normal state, or as it purports or is represented to be; or
- (ii) if any ingredient or material has been added to increase the bulk, weight or measure, or to conceal the inferior quality of the food ; or
 - (iii) if any part of it has been abstracted so as to diminish its nutritive value or to affect injuriously its nature, substance or quality ; or
 - (iv) if it is decayed, putrefied, weevil infested or is otherwise unfit for human consumption ; or
 - (v) if it does not comply with any standard laid down by or under this Act or any other law for the time being in force; or
 - (vi) if it contains or is mixed or dilluted with any substance in such quantity as is to the prejudice of the purchaser or consumer or in such proportion as diminishes in any manner the food value or nutritive qualities which it possesses in its pure, normal and undeteriorated condition.

(3) 'food' includes every article used for food or drink by man other than drugs or water, and includes sweetmeats, aerated water, sharbat, tea and any article which ordinarily enters into or is used in the composition or preparation of human food, and also includes flavouring matters and condiments ;

5. (1) No person directly or indirectly, himself or by any person on his behalf, shall sell to the prejudice of the purchaser or hawk any article of food which is not of the nature, or not of the substance, or not of the quality of the article demanded by the purchaser ;

Provided that an offence under this section shall not be deemed to have been committed—

(a) where any ingredient or material not injurious to health has been added to the article of food because it is required for the production or preparation thereof as an article of commerce, in a state fit for carriage or consumption, and not fraudulently to increase the bulk, weight or measure of the article or to conceal the inferior quality thereof ; or

(b) where the food is unavoidably mixed with some extraneous matter in the process of collection or preparation ; or

(c) where the food is the subject of a patent in force and is supplied in the state required by the specification of the patent.

(2) In any prosecution under this section it shall be no defence

to allege that the purchaser, having bought only for analysis, is not prejudiced.

Restrictions on mixing food with other ingredients.

6. (1) No person shall mix, colour, stain or powder, or order or permit any other person to mix, colour, stain or powder any article of food with any ingredient or material so as to render the article injurious to health with the intent that the article of food may be sold in that state.

(2) No person shall sell, expose for sale, hawk or store or possess for sale any article of food so mixed, coloured, stained or powdered as aforesaid.

Labels and advertisements describing foods incorrectly.

7. (1) No person shall give with any food sold by him a label, whether attached to or printed on the wrapper or container, which falsely describes that food, or is otherwise calculated to mislead as to its nature, substance or quality.

(2) No person shall publish, or be a party to the publication of an advertisement (not being such a label as aforesaid) which falsely describes any food, or is otherwise calculated to mislead as to its nature, substance or quality :

Provided that in proceedings under this sub-section, it shall be a good defence if it is proved that the person did not know and could not with reasonable diligence have ascertained that the advertisement was of such a character as aforesaid, or that, it being his business to publish advertisements, he received the advertisement for publication in the ordinary course of business.

Diseased persons not to manufacture, sell or touch food.

23. No person, who is suffering from any such disease as is notified by the Provincial Government in the official Gazette in this behalf, shall manufacture or sell any article of food, or wilfully touch any such article which is exposed or offered for sale by any other person.

**THE BIHAR PREVENTION OF FOOD ADULTERATION
ACT, 1947**

(Bihar Act V of 1948)

3. In this Act, unless there is anything repugnant in the subject or context—

(a) an article of food shall be deemed to be "adulterated"

if it has been mixed or packed with any other substance or if any part of it has been extracted, so as in either case to reduce or lower or injuriously affect its quality, substance or nature.

(b) "Chemical Examiner" means the Chemical Examiner to Government and includes the additional Chemical Examiner and also the Assistant Chemical Examiner to Government;

(c) "food" includes every article used for food or drink by man other than drug or water and any article which ordinarily enters into or is used in the composition or preparation of human food and also includes flavouring matters and condiments;

(d) "local area" means any area, urban or rural, declared by the Provincial Government, by notification, to be a local area for the purposes of this Act;

(e) "local authority" means—

(i) in a municipality the Municipal Commissioners;

(ii) in any local area situated within the jurisdiction of a District Board, the *District Board*; and

(iii) in any other local area such authority or persons as may from time to time be notified by the Provincial Government;

9. Prohibition of sale, etc., of certain articles—(5) In any prosecution under this section it shall be no defence to allege that the vendor, manufacturer, importer or person storing for sale any article of food was ignorant of the nature, substance or quality of the article sold, exposed for sale, or manufactured or imported or stored for sale by him or of any article used in the preparation of any food sold, exposed for sale, manufactured or stored for sale by him.

The United Provinces Prevention of Adulteration Act, 1912.

(United Provinces Act No. VI of 1912.)

4. (1) Whoever sells to the prejudice of the purchaser any article of food, or any drug which is not of the nature, substance, or quality of the article or drug demanded by such purchaser, or sells or offers or exposes for sale or manufactures for sale any article of food or any drug which is not of the nature, substance, or quality which it purports to be, [or which is sold or exposed for sale in a manner contrary to any regulations issued by the Provincial Government under sub-sections (f), (g), or (h) of section 14], shall be punished for the first offence with fine which may extend to [two hundred] rupees and for a second or any subsequent offence with

fine which may extend to [one thousand] rupees (or imprisonment of either description not exceeding three months or both).

Provided that no article shall be deemed to have been sold to the prejudice of the purchaser in the following cases, that is to say:

- (a) where any matter or ingredient not injurious to health has been added to the food or drug because the same is required for the production or preparation thereof as an article of commerce in a state fit for carriage or consumption, and not fraudulently to increase the bulk, weight, or measure of the food or drug or conceal the inferior quality thereof;
- (b) where in the process of production, preparation, or conveyance of such article of food or drug some extraneous substance has unavoidably become intermixed therewith;
- (c) where any matter or ingredient not injurious to health has been added to or mixed with such article of food or drug, and before the sale thereof the seller has brought to the notice of the purchaser, either by means of a label distinctly and legibly written or printed on or attached to the article or drug or otherwise, the fact that such matter or ingredient has been so added or mixed;
- (d) where a patent has been granted under any law for the time being in force in respect of any article of food or any drug and the article is sold in the state required by the specification of the said patent.

(2) In a prosecution under this section the Court may presume that any article of food or any drug found in the possession of a person who is in the habit of manufacturing like articles or who has been manufacturing for sale.

3. Any person who mixes, colours, stains or powders, or orders or permits any other person to mix, colour, stain or powder any article of food or drug with any matter or ingredient so as to render the article injurious to health with intent that the same shall be sold in the state, or sells or offers or exposes for sale, or exposes for sale any such article so mixed, coloured, stained or powdered, shall be punished for the first offence with fine which may extend to five hundred rupees and for every subsequent offence with fine which may extend to one thousand rupees or imprisonment of either description not exceeding three months or both.

Provided that no person shall be liable to be convicted under this section in respect of the sale of any such article of food or drug if he proves to the satisfaction of the court before whom he is charged that he did not know that the article of food or

is so mixed, coloured, stained or powdered as aforesaid and that could not with reasonable diligence have obtained such knowledge.

5 A. (1) When any regulations made under section 14 prescribe the standards of purity and composition of any article of food or drink intended for sale or prohibit or restrict the addition of any preservative or other ingredient or material to any such article, a purchaser of such article shall, unless the contrary is proved, be deemed for the purposes of section 4 (1) to have demanded an article complying with the provisions of the regulations, as regards the standards of purity, presence or amount of a constituent, ingredient, or material specified in the regulations, and the addition of any such ingredient or material, in contravention of the regulations, shall, for the purposes of this Act, be deemed to render the article injurious to health.

(2) Where any such regulations restrict the addition of any preservative, or other ingredient or material, to an article of food or drink, the addition of any such ingredient or material to an amount not exceeding the limit specified by the regulations shall not, for the purposes of this Act, be deemed to render the article injurious to health.

THE PUNJAB PURE FOOD ACT 1929

Punjab Act No. VIII of 1929

3. In this Act unless there is anything repugnant in the subject or context—

* * * * *

(c) "Food" includes every article used for food or drink by man other than a drug and any article which enters into the composition or is used in the preparation of any such article and also includes flavouring and colouring matters and condiments.

(h) "Sale" means a transfer of ownership in exchange for a price paid or promised, or part paid or part promised, and includes barter, or offering or attempting to sell or receiving for sale, or having in possession for sale or exposing for sale or sending or delivering for sale, or causing or allowing to be sold, offered, or exposed for sale, and refers only to sale for human consumption or use.

4. For the purposes of this Act any food shall be deemed to be adulterated—

(i) if it contains or is mixed or diluted with any substance

which diminishes in any manner its nutritive or other beneficial properties as compared with such food in a pure and normal state or which in any other manner operates or may operate to the prejudice or disadvantage of the purchaser or consumer ;

- (ii) if any substance or ingredient has been extracted or omitted therefrom, and by reason of such extraction or omission the nutritive or other beneficial properties of the food as sold are less than those of the article in its pure and normal state, or the purchaser or consumer is or may be in any other manner prejudiced thereby ;
- (iii) if it contains or is mixed or diluted with any substance of lower commercial value than such food in a pure and normal state ;
- (iv) if it does not comply with the standard prescribed by any rules made under this Act.

13. (1) No person shall—

- (a) manufacture or sell any adulterated food unless he has complied with such rules as may be prescribed in this behalf ;
- (b) manufacture or sell any food containing Vanaspathi unless he has complied with such rules as may be prescribed in this behalf ;
- (c) sell any food or enclose any food for sale in any package which bears or has attached thereto any false or misleading statement, word, brand, label or mark purporting to indicate the nature, quality, strength, purity, composition, weight, origin, age or proportion of the article contained in the package or of any ingredient thereof ;
- (d) manufacture or sell any food containing any substance the addition of which is prohibited by rule made under this Act, or containing a greater proportion of any substance than is permitted by such rules ;
- (e) sell any food under the name of "ghee" or any equivalent term with or without the addition of any other word to such name unless such food is derived solely from milk-fat ;
- (f) sell Vanaspathi on the same premises on which he sells "ghee" ;
- (g) manufacture or sell any food which is unfit for human consumption ;

- (2) No person who sells or forwards by any public conveyance any Vanaspati, shall sell or consign it otherwise than as Vanaspati ;
- (3) No person shall deal in Vanaspati, whether wholesale or by retail and whether as manufacturer, importer, consignee, consignee, commission agent, or otherwise unless he conforms to such of the following rules as may be applicable, that is to say :
- (a) every container containing Vanaspati shall have the words "Vanaspati" branded and durably marked on the bottom and the sides, also, if it be closed, on the top thereof the brand or mark being on the container itself and not only a label, ticket or other thing attached thereto ;
 - (b) there shall be attached to every parcel of Vanaspati exposed for sale by retail, in such manner as to be clearly visible to the purchaser, a label marked "Vanaspati."
 - (c) Vanaspati when sold by retail, save in container branded or durably marked as aforesaid, shall be delivered to the purchaser in a paper wrapper, with the word "Vanaspati" printed on the outside of the wrapper or, if more wrappers than one are used, on the outside of the outer wrapper, and the outside of that wrapper shall bear no other printed matter, except such as may be prescribed ;
 - (d) Vanaspati shall not be described on, or on a label enclosed within, any wrapper, enclosing or container containing it, or on any label attached to a parcel thereof, or in any advertisement or invoice thereof, by any name other than Vanaspati or a name combining the word "Vanaspati" with an approved fancy or other descriptive name printed in type, not larger than, and in the same colour, as the letters of the word "Vanaspati".

Explanation :—The expression "approved" means approved by the State Government, which in approving for the purposes of this section names to be used in relation to the Vanaspati, shall not approve any name which refers to, or is suggestive of, ghee or anything connected with the dairy interest.

- (4) Any substance resembling ghee which is exposed for sale and is not marked in the manner in which Vanaspati is required by this section or by the rules made under this Act, to be marked shall be presumed to be exposed for sale as ghee.

- (5) The marks shall be branded, durably marked or printed on or attached to the container, label or wrapper, as the case may be, in such language and in such manner as may be prescribed.
- (6) No person shall give with any food sold by him a label whether attached to or printed on the wrapper or container or not, which falsely describes that food or is otherwise calculated to mislead as to its nature, substance or quality.
- (7) No person shall publish, or be a party to the publication of, an advertisement (not being a label given by him as aforesaid) containing a description of any food, which he knows, or by the exercise of reasonable diligence could have known, or which he has reason to believe, to be false, or to be otherwise calculated to mislead regarding the nature, substance or quality of the food advertised.
- (8) Any person who contravenes the provisions of this section shall be punishable—
 - (a) in the case of a first offence with a fine which may extend to one thousand rupees or with simple or rigorous imprisonment up to six months or with both, and
 - (b) in the case of a second or subsequent offence with a fine which may extend to two thousand rupees or with simple or rigorous imprisonment up to one year or with both.

— — — —

The Madras Prevention of Adulteration Act, (III of 1918)
As amended by Act II 1928.

2. In this Act unless there is something repugnant in the subject or context,—

“Food” includes every article other than drugs or water used by man for food or drink, and all materials used or admixed in the composition or preparation of such article and shall also include flavouring matter and condiments.

5. (1) Every person who—

- (a) sells any food which is not of the nature, substance or quality of the article demanded by the purchaser; or

- (b) manufactures, stores or offers for sale or hawk's about or sells any food which is not of the nature, substance or quality which it purports, or is represented to be ; or
- (c) abstracts from any food any part of it so as to alter notoriously the nature, substance or quality thereof with intent that it should be sold in its altered state without notice of the alteration, or sells any article so altered without making disclosure of the alteration ; or
- (d) offers for sale or hawk's about or sells milk, cream, butter, ghee, cheese or any food which is not up to the standard of purity prescribed by the Local Government.

shall be punished for the first offence with fine which may extend to one hundred rupees and for every subsequent offence with fine which may extend to five hundred rupees :

Provided that in the following cases no offence under this section shall be deemed to have been committed -

- (i) where any innocuous material has been used or admixed in the composition or preparation of the food so render the same fit for carriage or conveyance and not fraudulently to increase the bulk, weight or measure of the food or to conceal or debase the quality thereof ; or
- (ii) where in the process of production, collection, preparation or conveyance of the food some extraneous material has unavoidably been admixed therewith ; or
- (iii) where any innocuous material has been added or admixed to the article of food sold is not up to the standard of purity prescribed by the Local Government and before the sale, the vendor has clearly brought the fact to the notice of the purchaser either by means of a label on or with the food or in such other manner as the Local Government may, by rule framed under section 20 of this Act, prescribe ; or
- (iv) where the food is the subject of a patent in force and is supplied in the state required by the specification thereof.

(3) In every prosecution for an offence against this section, the Court may presume that any food found in the possession of a person, who is in the habit of manufacturing or storing like articles for sale, has been manufactured or stored by such person for sale.

- 4. (1) In every prosecution for an offence against the last

proceeding section, it shall be no defence to allege merely that the vendor was ignorant of the nature, substance or quality of the food sold by him or that the purchaser having bought it for analysis was not prejudiced by the sale.

Provided that the vendor shall not be deemed to have committed an offence under section 5, if he proves that the food was purchased by him as the same in nature, substance and quality as that demanded by the purchaser and with a written warranty to the effect that it was of such nature, substance and quality, that he had no reason to believe at the time when he sold the same that the food was not of such nature, substance and quality and that he sold it in the same state as that in which he purchased it.

(2) Where an employer is charged with an offence under this Act, he shall be entitled on application duly made by him to have any other person whom he charges as the actual offender brought before the Court at the time appointed for the hearing and if, after the commission of the offence has been proved, the employer proves to the satisfaction of the Court that he used due diligence to enforce the execution of this Act and that the said other person committed the offence without his knowledge, consent or connivance, the said other person shall be convicted and the employer shall be acquitted.

— — —

Bengal Food Adulteration Act 1919 (Act VI of 1919)

4. *Definition*.—In this Act, unless there is anything repugnant in the subject or context, —

- (1) an article of food shall be deemed to be "adulterated" if it has been mixed or packed with any other substance, or if any part of it has been abstracted so as to render it unfit to affect injuriously its quality, substance or nature;

5. *Prohibition of sale etc., of food not of the proper nature, substance or quality*. (1) No person shall, directly or indirectly, himself or by any other person on his behalf, sell to the purveyor of the purchaser any article of food which is not of the nature, substance or quality of the article demanded by such purchaser and no person shall, directly or indirectly, himself or by any other person on his behalf, manufacture for sale any article of food which is not of the nature, substance or quality which it purports or is represented to be :

Provided that an offence shall not be deemed to be committed under this section in the following cases, that is to say —

- (a) where any matter or ingredient not injurious to health has been added to any article of food because the same is required for the production or preparation thereof as an article of commerce, in a state fit for carriage or consumption, and not fraudulently to increase the bulk, weight or measure of the article or to conceal the inferior quality thereof; or
- (b) where any article of food is unavoidably mixed with some extraneous matter in the process of collection or preparation; or
- (c) where a patent has been granted under any law for the time being in force in respect of any article of food, and the article is sold in the state required by the specification of the patent.

(2) In any prosecution under this section it shall be no defence to allege that the vendor or manufacturer was ignorant of the nature, substance or quality of the article sold, exposed for sale or manufactured for sale by him.

(3) In any prosecution under this section, the Court shall, unless and until the contrary is proved, presume that any article of food found in the possession of a person who is in the habit of manufacturing like articles for sale has been manufactured for sale by such person.

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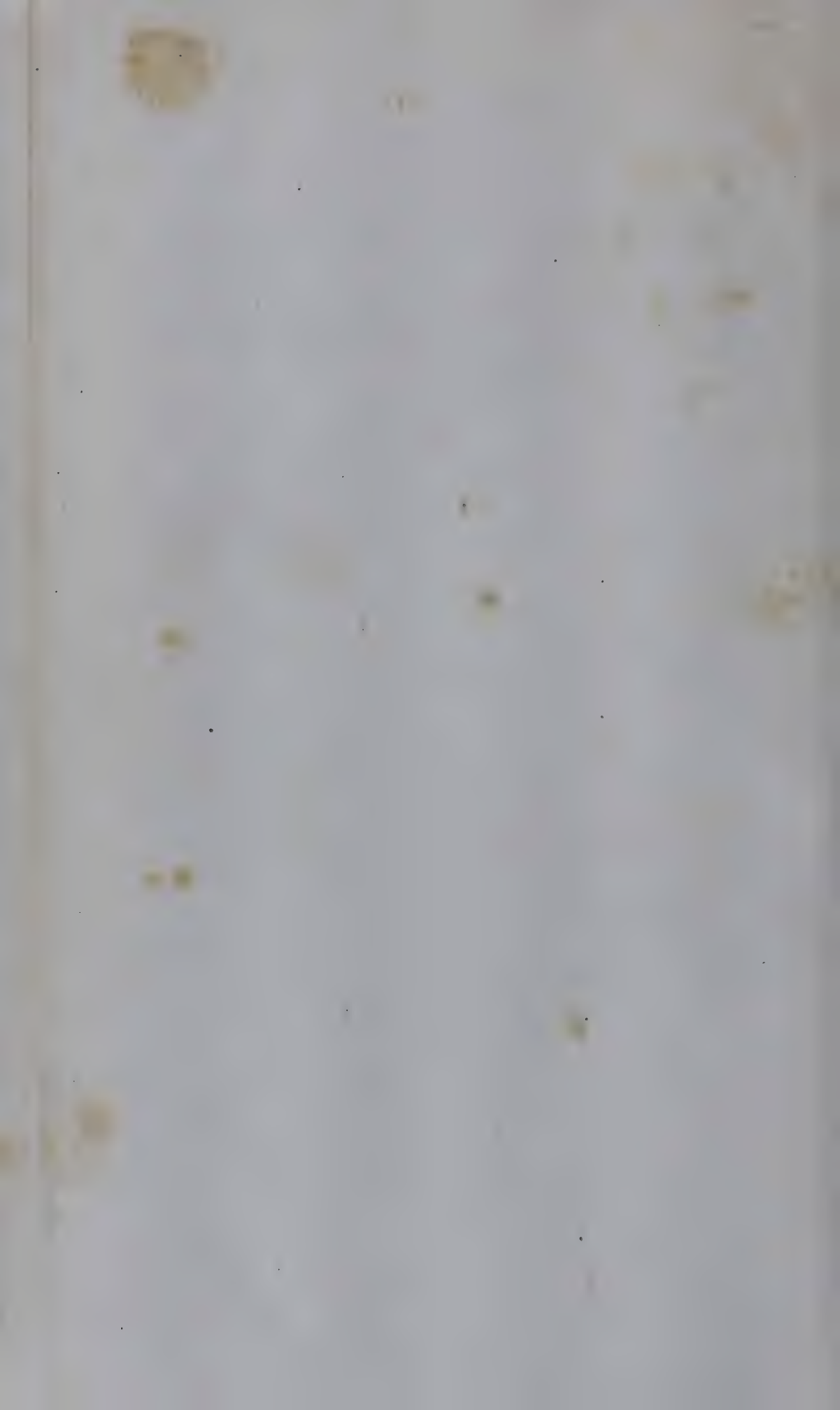
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Judgements from April 1959 to Jan. 1960

Section 2 (i) — **Adulteration not injurious to health-offence.**

The adulterated substance need not be poisonous or injurious ; indeed it may be conducive to health. The object of the Act is to see that the substance sold is not mixed with any other thing not permitted by law. Hence the plea that adulteration was not prejudicial to health but only added colour to the substance and made it more attractive to the buyer cannot be sustained.

S. Moses, in re - 72 Mad L.W, 117 : 1959 Cr. L. J. 608 : AIR 1959 Mad. 185.

Section 2 (i) — **Analysis of article - percentage at variance with prescribed specifications - purity below prescribed standard.**

If on analysis of an article it is established that the percentages found are at variance with the prescribed specifications then the quality or purity of that article would fall below the prescribed standard within the meaning of Section. 2 (i) (1) of the Act.

Corporation of the city of Nagpur vs Sukdeo, 1959 Nag. L. J. (Notes) 31.

Section 2 (i) (a) & 7 — **Applicability - Pepper sold as good pepper, found mixed with 50 percent of pepper shell. No standard of good pepper conviction - sustainability.**

Under Sec. 2 (i) (a) the article of food must be not only not to be of the nature, substance or quality demanded by the purchaser but it has also to be proved to be to his prejudice or must be proved to be not of the nature substance or quality which purports or is represented to be. Where there is no evidence that the admixture of empty shells of pepper could have any injurious effect when consumed, and there is no evidence what it considered to be good pepper and pepper may be good though not of best quality, in the absence of any standard, the conviction of the accused for selling pepper mixed with a large percentage of pepper shells, as good pepper cannot be sustained. Merely because the pepper had broken grains does not establish that it was not of the quality which was capable of being described as good pepper.

Municipal Board Lucknow vs Bhagwan Dass, 1959 Cr. L.J. 930:A.I.R. 1959 All. 500.

Prosecution under the Prevention of Food Adulteration Act for selling adulterated food - Essential factor necessary.

In a prosecution under this Act, the essential requisite to be established is that the commodity alleged to be adulterated should be one intended for sale. Where the accused was merely taking the milk got from the buffaloes owned by his brother to his (brother's) hotel and it was not intended for sale the accused is not guilty even if the milk is found to be adulterated. It may be that quantity of milk that was given to the Sanitary Inspector might amount to a sale but what has to be decided is whether the milk which the accused was taking was intended for sale. The hotel keeper who sells such milk though it is used for coffee might be guilty of an offence under the Act.

Public Prosecutor Vs Kandaswamy Reddiar - (1959) I.M.L.J. 234 : 1959 M.L.J. (Cr.) 239.

Sanitary Inspector appointed Food Inspector by State Government
Sanitary Inspector's powers to purchase sample if Health Officer absent on the spot.

Notification issued by the State Government under Sec. 9 of the Act appointed Health Officer or in his absence Sanitary Inspector as Food Inspectors for the purpose of the Act. A Sanitary Inspector purchased a sample of tea from the accused. The Health Officer was not present on the spot. The trying Magistrate acquitted the accused holding that the Sanitary Inspector has no jurisdiction to purchase as it was not shown that the Health Officer was absent on that day. Held, in appeal against acquittal that both the Health Officer and the Sanitary Inspector were empowered to exercise the powers of Food Inspector for the purposes of the Act. The only limitation on the powers of the Sanitary Inspector was that if the Health Officer himself was present at any particular occasion then it would not be competent for the Sanitary Inspector to take any action. The expression "in his absence" did not mean absence of health officer from duty altogether on that day but it means his absence at the spot when the Sanitary Inspector exercises the powers. The purchase by the Sanitary Inspector was therefore within his jurisdiction.

Corporation of the city of Nagpur Vs Sukhdeo, 1959, Nag. L. J. (Notes) 31.

Sec. 7 — Store for sale - Presumption - Evidence Act.

Where on searching the premises of an exporter of pepper it was found that a number of bags were filled with pepper and marked with the name of the city of Calcutta and that the pepper found in the bag was adulterated with deteriorated night berries. It was proper to presume under Sec. 114 Evidence Act that the accused who was admittedly an exporter of pepper had packed the pepper in the bag for the purpose of exporting it to Calcutta, in the course of sale and therefore has stored the pepper for sale.

Food Inspector, Kozhikode V S Punsil Desai. A. I. R. 1959 Ker 190 : 1959 Cr. L. J. 712 : ILR (1959) Ker. 56 : 1959 Ker. I. T. 983 : 1958 Ker. L. J. 1150.

Section 7 and 16 - Conviction for storing adulterated food - Storing must be for sale.

It is only storage for sale that is prohibited under S. 16 and not storage simpliciter.

Food Inspector Kozhikode VS Punsil Desai A. I. R. 1959 Kar. 190 : 1959 Cr. L. J. 712.

Sections 7 and 16 - Applicability to servant.

Secs. 7 and 16 of the Act will not primarily apply to the servant of the secondary seller of adulterated food unless he sold it for his own

benefit and the servant selling the food on behalf of his master can only be made liable for aid or abetment of the offence on proof of guilty knowledge express or implied. S. Moses, in re 72 Mad L. W. 117 : 1959 Cr. L. J. 608 : A. I. R. 1959 Mad. 185.

Section 7—16. **Liability of the servant in case he sells on behalf of his master.**

The expression "himself or by any person on his behalf in Secs. 7 and 16 (i) of the Act must imply that the person contemplated is the master or the principal, and not the servant. When a servant effects a sale he does so almost invariably on his master's behalf and seldom, if ever, himself sells. It was intended to prohibit a servant from effecting a sale of adulterated food on behalf of his master, and to render him liable therefore, it was only necessary for the legislature to insert the words "or behalf of another" after the words "by any person on his behalf" occurring in both sections. On a plain reading, it is quite clear, that it is only the person who can be deemed to sell himself, or by another on his behalf, who is interdicted from selling by Sec. 7 and who is made punishable by S. 16 (1) of the Act. No absolute liability can be fastened on a servant under Sec. 16 (1) read with S. 7 of the act.

State VS Kunchu. A. I. R. 1960 Ker. 3 : 1959 Ker. L. T. 574 : 1959 Ker. I. J. 588 : ILR (1959) Ker. 640 : 1959 Ker. L.R. 983.

Under Sec 7 the master would be liable for the acts of his servant committed by him in the course of his ordinary duties, and when a servant sells any commodity or article of food stocked for sale by the master of the shop, the master will be deemed to have authorised the sale of such article by the servant and it turns out that the article was adulterated, the master will also be liable although he was not present at the time of the actual sale by the servant. Budh Mal Vs State:- 61 B.L.R. 444 : 1959 Nag. L. J. 260 : ILR (1959) Bom. 1108. : 1959 Cr. L.J. 1035 : AIR 1959 Bom. 797.

Sections 10 (7) and 23 (1) (h) — **Scope of - Non compliance - effect.**

Where it is shown that the Food Inspector had not complied with Sec. 10 (7) even though the shop of the accused was situated in the bazar and that the samples were not taken in clean bottles as required by Rule 14. It was held that non-compliance of S. 10 amounted to a flagrant violation of the provisions of the Act. Even if this was treated as an irregularity this had resulted in prejudice to the accused.

State Vs Mohd Ibrahim, 1959 Ker. L.T. 395 : 1959 Ker. L. J. 367 : 1958 Mad L.J. (C.R.) 267 : 1959 Cr. L.J. 1923 : AIR 1959 Ker. 351.

Section 10 (7)—Scope—if mandatory. This sub-clause is a safe guard against the abuse of the wide powers the Act give to the food Inspector in matter of entry, search and seizure and it is meant to be complied with. The phrase "as far as possible" does not give the Food Inspector powers to dispense with the witnesses by just stating that he could not find any. It is meant only to obviate the difficult task of getting the witnesses in cases where the action occurs in isolated places or at times during the day or night when it is not usual to find people walking about. The provision is

4

mandatory and in case it is not complied with the court cannot rightly convict the accused. State VS S.V. Natesa Bounder. (1959) Mad. L. J. (Cr.) 821 (AIR 1959 Mad. 118 rel. on).

Section 20. Who can file complaint ? —Complaint by Commissioner of Municipality signed also by Sanitary S.I. and Municipal Health Officer. Whether valid?

Where a prosecution under S. 16 (1) is instituted on a complaint in writing of the Commissioner of the Municipality on which the Sanitary Inspector and Municipal Health Officer have subscribed their signatures to page 2 of the complaint does not alter the fact that the complaint is by the commissioner of Municipality himself and not any other authority. The Commissioner of Municipality does not fall within any of the seven categories of persons or authorities under S. 20. So the complaint in the case naturally has been instituted by an unauthorised person and the Magistrate had no jurisdiction to take cognizance on the same.

Public prosecutor VS Satya Narayana A. I. R. 1960 A. P. 27 : 1959 And L. T. 768.

Secs. 7 (1) and 16 (I) (a)—Article containing 95.9% Calcium Carbonate rest-sand offered for sale to public as black gram flour - offence under section 2 (v) and (ix).

An accused dealer in black gram flour, was found having stored and exposed for sale in his shop some articles purporting to be black gram flour. A sample recovered from which on analysis was found to contain 95.9% of calcium carbonate and 9.6 % sand with no black gram flour in it. The accused stored in his shop "mis-branded" food although the article stored constitutes "food" as defined in Sec. 2 (v) and a conviction under section 7 (1) read with 16 (1) (a) should follow. Clause (a) to Section (ix) would apply in terms to the article.

In the case the accused was not convicted on the ground that this was either a case of honest bungling or of calculated mischief and fowl play and the prosecution evidence was not believed as the article did not contain a particle of black gram flour.

Food Inspector Municipal Council Vs Karuppaiya Nadar. 1959. Cr. L. J. 840 : AIR 1959 Ker. 217.

Sections 16 (1), 17 and 19—Scope of prosecution against one partner of the firm carrying on business of groundnut oil - plea that he was selling in the condition he purchased and did not know that it was adulterated. Further plea that partner cannot be charged under the Act - sustainability.

Wherein a prosecution against one of the partners of a firm the accused pleaded that he was selling the oil in the condition in which he had bought it and did not know that it was adulterated and that he was not liable in as much as he was only one of the several partners of the company and

and it was the company that was doing the wholesale business, and where the trial court acquitted the accused on the ground that the individual partner of the company cannot be charged under the Act, on appeal by the State it was held that under Sec. 17 not only the company but also every person who at the time the offence was committed was in charge of and was responsible to the company for the conduct of his business shall be liable to prosecution. The plea that he was not aware of adulteration was not entertainable in view of Section 19 which specifies the defences open or not open to the person charged under the Act. The acquittal was held to be bad in law. Public Prosecutor. Andh. Pra. Vs Batchu Veerabhadra Rao. (1959) 2 Andh. W. R. 479.

Section 16 prescribes a minimum sentence in case of second offence. Any sentence less than that prescribed under S. 16 would be illegal. Special modes of proving previous conviction have been laid down in Sec 511 Cr. P.C. Further a judgment of conviction has to be in writing. This is therefore, a matter required by law to be reduced to the form of a document. According to S. 91 Evidence Act, such matter can be proved either from the document itself or from secondary evidence when such secondary evidence is admissible. Where it is not suggested that the original judgment of previous conviction has been lost oral evidence cannot be led to prove previous conviction. Previous conviction could perhaps be proved from an admission of the accused.

City Board Saharanpur Vs Abdul Wahid. 1959 All. L.J. 462 : 1959 Cr. L.J. 1263 : AIR 1959 All. 695.

Sec. 16 (1)(g). **Second offence must be under the same Act.**

The second offence contemplated by this Act must be under the same Act. City Board Saharanpur Vs Abdul Wahid. AIR 1959 All. 695.

Section 16 (1) (ii) — **Second Offence - Trial - Procedure - Warrant case- Cr. P.C. Sec. 251, 255 - A-**

Second offence under the Act provides for enhanced penalty of imprisonment which may extend to two years. Therefore the case is triable as a warrant case as laid down in Chapter 21 of the Cr. P.C. and the proper stage for charging the accused with previous conviction and recording evidence in respect of the charge would be stage mentioned in Sec. 255-A Trial of case under Chapter 20 and convicting the accused on his own admission of guilt and ignoring the prior conviction on the ground that no evidence of that conviction was adduced before him, whereas in reality he gave the prosecution no opportunity of adducing such evidence is irregular if not stringent. Food Inspector Trivandrum Vs Kunju. A.I.R. 1959 Ker 371 : 1959 Ker. L.T. 140 : 1959 Cr. L.J. 1330.

Section 25 (1), (2) - Repeal of Bihar Prevention of Food Adulteration Act. Effect.

The Bihar Act must be deemed to have been repealed. What provided is not the local Act but the rules, regulations and bye-laws relating to the prevention of adulteration of food made under such corresponding

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